

Exhibit A

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

Shutterfly, Inc.; Lifetouch, Inc.; Lifetouch National School Studios, Inc.; and Does 1-10

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

Shawna Allen

E-FILED FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

2/14/2020 11:09 AM

Clerk of Court

Superior Court of CA,

County of Santa Clara

20CV363509

Reviewed By: D Harris

Envelope: 4031893

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
Santa Clara Superior Court

CASE NUMBER: (Número del Caso):

20CV363509

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Ted Mechtenberg, Da Vega Fisher Mechtenberg LLP, 1567 Spinnaker Drive, Suite 201, Ventura, CA 93001

DATE: 2/14/2020 11:09 AM Clerk of Court Clerk, by D Harris Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☒ on behalf of (specify): SHUTTERFLY, INC.
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
- ☒ by personal delivery on (date) 3/11/2020

Page 1 of 1

Date Served:

3/11/2020

Time Served:

4:15 PM

Server:

DS 4400962

SUMMONS

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
191 N. FIRST STREET
SAN JOSE, CA 95113-1090

Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 3/9/2020 10:12 AM
Reviewed By: R. Walker
Case #20CV363509
Envelope: 4138408

TO: FILE COPY

RE: Allen v. Shutterfly, Inc., et al.
CASE NUMBER: **20CV363509**

**ORDER DEEMING CASE COMPLEX AND STAYING DISCOVERY
AND RESPONSIVE PLEADING DEADLINE**

WHEREAS, the Complaint was filed by Plaintiff **SHAWNA ALLEN** ("Plaintiff") in the Superior Court of California, County of Santa Clara, on **February 14, 2020** and the matter was assigned to Department **3** (Complex Civil Litigation), the **Honorable Patricia M. Lucas** presiding, pending a ruling on the complexity issue;

IT IS HEREBY ORDERED that:

The Court determines that the above-referenced case is **COMPLEX** within the meaning of California Rules of Court 3.400. The matter remains assigned, for all purposes, including discovery and trial, to Department **3** (Complex Civil Litigation), the **Honorable Patricia M. Lucas** presiding.

The parties are directed to the Court's local rules and guidelines regarding electronic filing and to the Complex Civil Guidelines, which are available on the Court's website.

Pursuant to California Rules of Court, Rule 3.254, the creation and maintenance of the Master Service List shall be under the auspices of (1) Plaintiff **SHAWNA ALLEN**, as the first-named party in the Complaint, and (2) the first-named party in each Cross-Complaint, if any.

Pursuant to Government Code section 70616(c), each party's complex case fee is due within ten (10) calendar days of this date.

Plaintiff shall serve a copy of this Order on all parties forthwith and file a proof of service within seven (7) days of service.

Any party objecting to the complex designation must file an objection and proof of service within ten (10) days of service of this Order. Any response to the objection must be filed within seven (7) days of service of the objection. The Court will make its ruling on the submitted pleadings.

The Case Management Conference remains set for **June 12, 2020 at 10:00 a.m. in Department 3** and all counsel are ordered to attend in person.

Counsel for all parties are ordered to meet and confer in person at least 15 days prior to the First Case Management Conference and discuss the following issues:

1. Issues related to recusal or disqualification;
2. Issues of law that, if considered by the Court, may simplify or further resolution of the case, including issues regarding choice of law;

3. Appropriate alternative dispute resolution (ADR), for example, mediation, mandatory settlement conference, arbitration, mini-trial;
4. A plan for preservation of evidence and a uniform system for identification of documents throughout the course of this litigation;
5. A plan for document disclosure/production and additional discovery; which will generally be conducted under court supervision and by court order;
6. Whether it is advisable to address discovery in phases so that information needed to conduct meaningful ADR is obtained early in the case (counsel should consider whether they will stipulated to limited merits discovery in advance of certification proceedings), allowing the option to complete discovery if ADR efforts are unsuccessful;
7. Any issues involving the protection of evidence and confidentiality;
8. The handling of any potential publicity issues;

Counsel for Plaintiff is to take the lead in preparing a Joint Case Management Conference Statement to be filed 5 calendars days prior to the First Case Management Conference, and include the following:

1. A Statement as to whether additional parties are likely to be added and a proposed date by which all parties must be served;
2. Service lists identifying all primary and secondary counsel, firm names, addresses, telephone numbers, email addresses and fax numbers for all counsel;
3. A description of all discovery completed to date and any outstanding discovery as of the date of the conference;
4. Applicability and enforceability of arbitration clauses, if any;
5. A list of all related litigation pending in other courts, including Federal Court, and a brief description of any such litigation, and a statement as to whether any additional related litigation is anticipated (CRC 3.300);
6. A description of factual and legal issues – the parties should address any specific contract provisions the interpretation of which may assist in resolution of significant issues in the case;
7. The parties' tentative views on an ADR mechanism and how such mechanism might be integrated into the course of the litigation;
8. Whether discovery should be conducted in phases or limited; and if so, the order of phasing or types of limitations of discovery. If this is a class action lawsuit, the parties should address the issue of limited merits discovery in advance of class certification motions.

To the extent the parties are unable to agree on the matters to be addressed in the Joint Case Management Conference Statement, the positions of each party or of various parties should be set forth separately and attached to this report as addenda. The parties are encouraged to propose, either jointly or separately, any approaches to case management they believe will promote the fair and efficient handling of this case. The Court is particularly interested in identifying potentially dispositive or significant threshold issues the early resolution of which may assist in moving the case toward effective ADR and/or a final disposition.

STAY ON DISCOVERY AND RESPONSIVE PLEADING DEADLINE Pending further order of this Court, the service of discovery and the obligation to respond to any outstanding discovery is stayed. However, Defendant(s) shall file a Notice of Appearance for purposes of identification of counsel and preparation of a service list. The filing of such a Notice of Appearance shall be without prejudice to the later filing of a motion to quash to contest jurisdiction. Parties shall not file or serve responsive pleadings, including answers to the complaint, motions to strike, demurrers, motions for

change of venue and cross-complaints until a date is set at the First Case Management Conference for such filings and hearings.

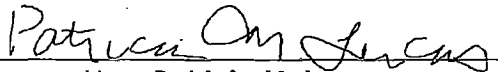
This Order is issued to assist the Court and the parties in the management of this "Complex" case through the development of an orderly schedule for briefing and hearings. This Order shall not preclude the parties from continuing to informally exchange documents that may assist in their initial evaluation of the issues presented in this Case.

Plaintiff shall serve a copy of this Order on all the parties in this matter forthwith.

SO ORDERED.

Date: _____

Signed: 3/6/2020 03:02 PM


Hon. **Patricia M. Lucas**
Judge of the Superior Court

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408) 882-2700, or use the Court's TDD line, (408) 882-2690 or the Voice/TDD California Relay Service, (800) 735-2922.

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Ted Mechtenberg, SBN 219602 Da Vega Fisher Mechtenberg LLP 640 W. California Ave., Suite 210 Sunnyvale, CA 94086 TELEPHONE NO.: 408.758.8974 FAX NO.: 877.535.9358 ATTORNEY FOR: (Name): Plaintiff Shawna Allen and Proposed Class		Electronically Filed by Superior Court of CA, County of Santa Clara, on 2/14/2020 11:09 AM Reviewed By: D Harris Case #20CV363509 Envelope: 4031893
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 N. First Street MAILING ADDRESS: 191 N. First Street CITY AND ZIP CODE: San Jose 95113 BRANCH NAME: Downtown Court House		
CASE NAME: Allen v. Lifetouch, etc.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		CASE NUMBER: 20CV363509 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input checked="" type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): Five
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: February 14, 2020
 Ted Mechtenberg

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage

Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint RICO (27)

Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

E-FILED
2/14/2020 11:09 AM
Clerk of Court
Superior Court of CA,
County of Santa Clara
20CV363509
Reviewed By: D Harris

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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

SHAWNA ALLEN, individually and on
behalf and all others similarly situated,

Plaintiffs,

vs.

SHUTTERFLY, INC., LIFETOUCH, INC.,
LIFETOUCH NATIONAL SCHOOL
STUDIOS, INC., and DOES 1-10,
inclusive,

Defendants.

Case No. 20CV363509

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF:**

- (1) SOLICITATION OF PAYMENT FOR
UNORDERED GOODS (Civ. Code §
1716);**
- (2) VIOLATION OF CIV. CODE § 1584.5;**
- (3) VIOLATION OF THE CALIFORNIA
CONSUMERS LEGAL REMEDIES ACT
(Civ. Code § 1750)**
- (4) UNFAIR COMPETITION (Bus. & Prof.
Code 17200 et seq.)**
- (5) UNJUST ENRICHMENT**

DEMAND FOR JURY TRIAL

Individual and Representative Plaintiff Shawna Allen ("Plaintiff" or "Allen") brings this action on behalf of herself and all others similarly situated ("the Class"), and on information and belief alleges against Defendants Shutterfly, Inc. ("Shutterfly"), Lifetouch, Inc. ("Lifetouch"), Lifetouch National School Studios, Inc. ("Lifetouch NS"), and Does 1-10 (collectively

1 “Defendants”) the following:

2 **NATURE OF THE CASE**

3 1. Defendants are in the business of selling school pictures. They contract with
4 schools to provide bi-annual portrait sessions within schools and sell the portraits to students’
5 parents and guardians.

6 2. The pictures that Defendants take in the Spring are regularly sold under a so-called
7 “Family Approval” model whereby students’ portraits and/or products printed with their portraits
8 are sent home with the students. They are accompanied by written materials directing parents and
9 guardians to purchase the portraits and/or products or return them to school.

10 3. As explained in detail below, Defendants sent unordered portraits and/or products
11 home with Plaintiff’s children and sought payment for them in violation of California law and the
12 laws of the states across the nation.

13 4. Each spring of the last three years, Defendants offered portraits of Plaintiff’s
14 children for sale. Included in Defendants’ offer were unsolicited portraits of Plaintiff’s children
15 that were not actually ordered or requested by Plaintiff, which are deemed an unconditional gift.
16 Each of the last three springs, however, Defendants sent Plaintiff statements requesting payment
17 for the portraits. This practice is in direct violation of Cal. Civil Code §§ 1584.5 and 1716, the
18 Consumers Legal Remedies Act, Cal. Civ. Code § 1750, and the California Unfair Competition
19 Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*

20 5. This case is brought as a class action under California Code of Civil Procedure
21 (“CCP”) §382 and Civil Code § 1781. This class action lawsuit arises out of Defendants’ policy
22 and practice of illegally sending unordered portraits and other products to Plaintiff and class
23 members and requesting payment for these unsolicited goods.

24 6. As a result of Defendants’ violations, thousands of individuals throughout the
25 United States including individuals within the state of California received unsolicited portraits of
26 their children that were not ordered or requested.

27 **The Parties**

28 7. **Plaintiff Shawna Allen** (“Allen”) is an individual who resides in the state of

1 Kansas. During all times relevant she has resided in Olathe, Johnson County, Kansas.

2 8. **Defendant Shutterfly, Inc.** is incorporated in Delaware. Defendant Shutterfly,
3 Inc. has its principal place of business at 2800 Bridge Parkway, Redwood City, San Mateo
4 County, California. Defendant Shutterfly, Inc. can be served via its registered agent, The
5 Prentice-Hall Corporation System, Inc., 251 Little Falls Drive, Wilmington, DE 19808.

6 9. **Defendant Lifetouch, Inc.** and its wholly owned subsidiary, **Defendant**
7 **Lifetouch National School Studios, Inc.**, are Minnesota corporations with their principal place
8 of businesses in Minnesota. They may be served via their registered agent, Corporation Service
9 Company, located at 2345 Rice Street, Suite 230, Roseville, MN 55113.

10 **Fictitious Defendants**

11 10. Defendants Does 1-10, inclusive, are sued herein under fictitious names. Their
12 true names and capacities are unknown to Plaintiff at this time. When their true names and
13 capacities are ascertained, Plaintiff will amend this Complaint by inserting their true names and
14 capacities. Plaintiff is informed and believes, and thereon alleges that each of the fictitiously-
15 named Defendants are responsible in some manner for the occurrences alleged herein and that
16 Plaintiff's and the proposed Class Members' damages and penalties alleged herein were
17 proximately caused by such Defendants.

18 **Agency**

19 11. Plaintiffs are informed, believe, and thereon allege that each of the Defendants
20 herein was, at all times relevant in this action, the agent, employee, representing partner, officer,
21 director, subsidiary, affiliate, parent corporation, successor and/or predecessor in interest and/or
22 joint venture of the remaining Defendants and was acting within the course and scope of that
23 relationship. Plaintiffs are further informed, believe, and thereon allege that each of the
24 Defendants herein gave consent to, ratified, adopted, approved, controlled, aided and abetted,
25 and/or otherwise authorized the acts alleged herein to the remaining Defendants.

26 **Jurisdiction and Venue**

27 12. This Court has personal jurisdiction over the Defendants because they have
28 purposefully availed themselves of the privilege of conducting business in California insofar as

1 Shutterfly has its principal place of business in the State and Defendants maintain systematic and
2 continuous business contacts with California.

3 13. Jurisdiction and venue are proper in this Court pursuant to Defendants' Terms of
4 Service and corresponding forum selection clause, which provide that any dispute shall "submit
5 to the exclusive jurisdiction of any State or Federal court located in the County of Santa Clara,
6 California, United States of America."

7 14. The Terms of Service also contain a choice of law provision dictating that
8 California law will apply to all consumers nationwide: "These Terms are governed and construed
9 in accordance with the laws of the State of California, United States of America, without regards
10 to its conflict of law provisions."

11 15. A copy of the Terms of Service is attached as Exhibit 1 and incorporated into this
12 complaint.

13 General Allegations

14 16. Plaintiff, on information and belief, alleges the following:

15 17. To millions of parents and students, "Shutterfly" and "Lifetouch" are household
16 names.

17 18. Defendants have described themselves as "the national leader in school portraits."

18 19. Defendants are the nation's largest producer of school photos.

19 20. As explained in their March 1, 2019 Form 10-K SEC filing, Defendants capture
20 images of more than 25,000,000 individuals each year.

21 21. In one form or another, Defendants' photos find their way to the wallets,
22 refrigerators, bookshelves and picture frames of more than 48 million homes across North
23 America each year.

24 22. The school photo industry is worth \$1.6 billion a year, according to IBISWorld, a
25 market research firm based in Los Angeles.

26 23. Defendants control approximately 40% of the market for school photos, but they
27 are facing industry challenges.

28 24. As explained in a May 10, 2019, New York Times article, the industry is wobbling

1 because of the spread of digital cameras and smartphones, high prices, schools' photo fees, and
2 decreasing sales. <https://www.nytimes.com/2019/05/10/style/school-photos-costs.html>.

3 25. There is also increased competition from local companies.

4 26. Defendants began selling Spring portraits under a "Family Approval" model in
5 some markets, including in the Olathe School District and, on information and belief, other
6 communities throughout the nation including California, whereby portraits and/or products are
7 sent home with students, and their parents and guardians are directed to pay for the portraits
8 and/or products or return them.

9 27. Defendants additionally seek to collect for the portraits and/or products by
10 emailing parents and guardians with reminders to pay.

11 28. During the relevant time, Defendants have sold Spring portraits and/or products
12 throughout the country including California under the "Family Approval" model.

13 29. By way of example, Defendants sent unordered portraits and/or products to
14 Plaintiff each Spring during the past three years.

15 30. Each Spring, Plaintiff's children came home from school with Lifetouch portraits
16 and/or products taken by Defendants under the "Family Approval" model described above.

17 31. In or about May 2017, Plaintiff received an email from Defendants stating "Pay
18 for your Spring Portrait Package," and advising that portrait packages should be coming home
19 soon. The email directed Plaintiff to select her favorites and pay at mylifetouch.com. The emails
20 further thanked her if she had already paid and directed her to return any unpurchased portraits to
21 school.

22 32. On or about March 2, 2018, Plaintiff received an email from Defendants stating
23 that "Spring Picture Day is Monday, March 5." Defendants' email gave tips on what her children
24 should wear and "how to prepare for Picture Day."

25 33. In or about March of 2018, Plaintiff received an email from Defendants stating
26 that Spring Portraits would be coming home soon with her children. The email directed Plaintiff
27 to select her favorites and to pay at mylifetouch.com. The email further directed her to return any
28 unpurchased portraits to school.

1 34. The outside of the 2017 envelope containing the portraits and/or products states:
2 “Details inside on how to buy.”

3 35. The back of the 2017 envelopes states: “Send payment to school or pay at
4 mylifetouch.com.”

5 36. The flap of the 2017 envelope states: “Time-sensitive materials.”

6 37. The outside of the 2018 envelope containing the portraits and/or products states:
7 “Details inside on how to buy.”

8 38. The back of the 2018 envelope states: “Send payment to school or pay at
9 mylifetouch.com.”

10 39. The flap of the 2018 envelope states: “Time-sensitive materials.”

11 40. Inside the 2017 envelope were one 8x10” portrait, two 5x7” portraits, four 3x5”
12 portraits, eight 2x3” portraits, and one fun pack containing a bag tag, key tags, a bookmark, and a
13 door hanger with portraits printed on them.

14 41. Similarly, inside the 2018 envelope were one 8x10” portrait, two 5x7” portraits,
15 four 3x5” portraits, eight 2x3” portraits, and one fun pack containing a bag tag, key tags, a
16 bookmark, and a door hanger with portraits printed on them.

17 42. The 2017 envelope contained two forms purporting to provide parents and
18 guardians with a choice as to how to proceed.

19 43. The first form states: “The choice is yours ...” and gives parents and guardians the
20 choice to either (1) purchase portraits and/or products using the form, (2) pay at mylifetouch.com,
21 or (3) “return envelope and any portraits not purchased to school within 7 days.” The form states
22 the entire package costs \$45.00.

23 44. The second form, printed on an envelope, states: “Pay for your Spring Portraits
24 online at mylifetouch.com.”

25 45. Plaintiff purchased the entire packet of spring portraits and products from
26 Lifetouch in Spring 2017 with a check. She did not purchase the spring 2017 portraits online.

27 46. Plaintiff believes she purchased the entire packet of spring portraits and products
28 from Lifetouch in Spring 2018 with cash. She did not purchase the spring 2018 portraits online.

1 47. On information and belief, Plaintiff states that she received similar envelopes from
2 Defendants containing unordered school portraits and/or products in other years as well.

3 48. In all situations alleged above, Plaintiff did not order these portraits and/or
4 products, nor did Defendants ask Plaintiff to pre-order them.

5 49. Defendants' communications, including their envelopes, written materials, and
6 emails do not disclose that California law prohibits the distribution of unordered merchandise
7 and/or that these portraits and/or products are unconditional gifts that do not require payment or
8 return.

9 50. Further, through their communications, including their envelopes, written
10 materials and emails, Defendants willfully misrepresent, misstate and/or improperly suggest that
11 parents and guardians are legally obligated to purchase the portraits and/or products or return
12 them.

13 51. On information and belief, Defendants have distributed the same or similar
14 envelopes containing unordered school portraits and/or products to elementary and middle school
15 students in school districts across the country.

16 52. On information and belief, Defendants have also sent the same or similar emails
17 directing and/or reminding to pay for the unordered portraits and/or products or return them to
18 school to parents and guardians of elementary and middle school students.

19 53. Defendants' "Family Approval" model directly violates California law, as well as
20 the consumer protection laws of each state.

21 54. Not only is this scheme illegal, misleading, and unconscionable, but sending
22 unsolicited goods home with students and emailing their homes unfairly pressures their parents
23 and guardians to pay for Defendants' expensive portraits and/or products or risk disappointing
24 their children and/or face embarrassment in front of teachers and school administrators.

25 55. On information and belief, Defendants contract with hundreds, if not thousands, of
26 school districts nationwide to be their exclusive school portrait for purposes of, among other
27 things, school portraits, yearbooks, class/extracurricular portraits, and staff portraits.

28 56. Defendants are aware that their practice of sending students home with unordered

1 portraits and/or products and seeking payment for them is unlawful but continue the practice to
2 increase their profits.

3 57. Shutterfly stated in a March 1, 2019, SEC filing:

4 In some markets, Lifetouch offers spring portraits under a “Family
5 Approval” model whereby portrait products are distributed by the school to
6 parents for review. Parents are asked to pay for the products they elect to
7 keep (if any) and to return any products they do not wish to purchase to the
8 school. Lifetouch has been and in the future **may be subject to claims
9 from individuals that these products qualify as “gifts” and/or that the
10 program does not comply with legislation pertaining to “unsolicited
11 goods.”** While we do not believe that such legislation is applicable to
12 school portraits, if Lifetouch becomes subject to such claims and is
13 required or elect to curtail the use of the Family Approval model, its
14 business and revenue may be negatively impacted.

15 Shutterfly, Inc., Quarterly Report (Form 10-K), at 29 (March 1, 2019), available at
16 [https://www.sec.gov/ix?doc=/Archives/edgar/data/1125920/000112592019000008/sfly-
17 20181231.htm#i_0_64](https://www.sec.gov/ix?doc=/Archives/edgar/data/1125920/000112592019000008/sfly-20181231.htm#i_0_64) (Emphasis added).

18 58. Plaintiff brings this class action on behalf of herself and all similarly situated
19 individuals to stop Defendants’ illegal use of the “Family Approval” model and recover
20 Defendants’ ill-gotten gains.

21 **Class Action Allegations**

22 59. Plaintiff brings this action individually and as a class action on behalf of an opt-out
23 class (the “Class”) defined as follows:

24 **All individuals who received and paid for unordered school
25 portraits and/or products from Defendants within the past four
26 years.**

27 60. Plaintiffs reserve the right under Rule 3.765(b), California Rules of Court, to
28 amend or modify the class description with greater specificity or further division into a subclasses
or limitations to particular issues.

61. This action is brought, and may properly be maintained, as a class action pursuant
to California Code of Civil Procedure §382 and Civil Code § 1781 (and the analogous provisions
of Federal Rules of Civil Procedure 23(a)(1)-(4) and 23(b).)

62. Defendants, via their unlawful actions, have violated various California consumer

1 protection laws along with California Civil code prohibiting such conduct. There is a well-
 2 defined community of interest in the litigation, and the proposed class is easily ascertainable. As
 3 described below, this action also satisfies the numerosity, commonality, predominance, typicality,
 4 adequacy, and superiority requirements.

5 **Numerosity**

6 63. A class action is the only available method for the fair and efficient adjudication of
 7 this controversy. Although the exact number and identities of Class Members are unknown to
 8 Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is
 9 informed and believes that the Class includes at least 1000 persons. On information and belief,
 10 therefore, Plaintiff alleges that the members of the Class are so numerous that joinder of all
 11 members is impractical, if not impossible. Membership in the Class will be determined upon
 12 analysis of, *inter alia*, telephone systems records maintained by Defendants.

13 **Commonality and Predominance**

14 64. The Plaintiffs and the Class share a community of interest because there are
 15 numerous common issues of fact and law that predominate over any questions and issues solely
 16 affecting individual members. Such common factual and legal issues include, but are not limited
 17 to, the following:

18 a. Whether Defendants had a policy or practice of sending Plaintiff and class
 19 members unordered portraits and products and then demanding payment;

20 b. Whether Defendants had a policy or practice during the Class Period of not
 21 disclosing/providing notice to the proposed Class Members that these portraits and products
 22 should be considered a "gift";

23 c. Whether California law applies to the claims of Plaintiff and class members;

24 d. Whether Defendants violated Cal. Civ. Code § 1584.5;

25 e. Whether Defendants violated Cal. Civ. Code § 1716;

26 f. Whether Defendants violated California's Consumer Legal Remedies Act (Civ.
 27 Code § 1750 et seq.);

28 g. Whether Defendants violated the California Unfair Competition Law, § 17200.

Typicality

65. Plaintiff's claims are typical of the claims of the proposed Class. Plaintiff and all Class Members are based on the same legal theories and arise out of the same common course of conduct and unlawful policies or practices of Defendant, resulting in the same injury to Plaintiffs and Class Members.

Adequacy of Representation

66. Plaintiff will fairly and adequately represent the Class. Plaintiff has the same interests in the litigation of this case as the Class Members. Plaintiff is committed to vigorous prosecution of this case and has retained competent counsel who are experienced in class actions of this nature. Plaintiff is not subject to any individual defenses different from those conceivably applicable to the Class as a whole. Plaintiff and her counsel are not aware of any interest adverse to those of the other proposed Class Members.

Superiority of Class Action

67. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all Class Members is impractical. The nature of this action and the format of laws available to Plaintiff and Class Members identified herein make the class action format a particularly efficient and appropriate procedure to redress the wrongs alleged herein. If each Class Member were required to file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual class member with their vastly superior financial and legal resources. Requiring each class member to pursue an individual remedy would also discourage the assertion of lawful claims by Class Members who would be disinclined to file an action against Defendant.

68. Even if every Class Member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous cases would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same factual issues leading to

1 establishment of inconsistent rulings and standards. The prosecution of individual actions may
 2 create a risk of adjudications that as a practical matter may be dispositive of the Class Members
 3 interest not parties to those adjudications or that may impede or impair the ability of those non-
 4 party Class Members to protect their own interest. Further, it will allow the illegal actions (that
 5 are difficult to discovery due to their convert nature) and very real harm suffered by numerous
 6 putative Class Members to continue unabated due to most individual's inability to pursue and
 7 enforce such individual claims because of the limited statutory penalty. By contrast, the conduct
 8 of this action as a class action, with respect to some or all of the issues presented herein, presents
 9 fewer management difficulties, conserves the resources of the parties and the court system, and
 10 protects the rights of each Class Member. Plaintiff anticipates no management difficulties in this
 11 litigation.

12 69. Further, the Defendant has also acted, or have refused to act, in respects generally
 13 applicable to the Class, thereby making appropriate final and injunctive relief, or corresponding
 14 declaratory relief, with regard to Class Members as a whole, as requested herein. Likewise,
 15 Defendant's conduct, as described herein, is unlawful, ongoing, and will continue unless
 16 restrained and enjoined by this Court.

17 **FIRST CAUSE OF ACTION**

18 **Solicitation of Payment for Unordered Goods**

19 **(Civ. Code § 1716)**

20 **(By Plaintiff against All Defendants)**

21 70. Plaintiff incorporates by reference in this cause of action each allegation of all of
 22 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
 23 Does 1-10, and each of them, as follows:

24 71. California Civil Code § 1716 states "It is unlawful for a person to solicit payment
 25 of money by another by means of a written statement or invoice, or any writing that reasonably
 26 could be considered a bill, invoice, or statement of account due, but is in fact a solicitation for an
 27 order, unless the solicitation conforms to subdivisions (b) to (f), inclusive."

28 72. Subsection (b) of § 1716 requires a statement that the solicitation is not a bill as

1 follows:

- 2 • “THIS IS NOT A BILL. THIS IS A SOLICITATION. YOU ARE UNDER NO
- 3 OBLIGATION TO PAY THE AMOUNT STATED ABOVE UNLESS YOU
- 4 ACCEPT THIS OFFER.”
- 5 • “This is a solicitation for the order of goods or services, or both, and not a bill,
- 6 invoice, or statement of account due. You are under no obligation to make any
- 7 payments on account of this offer unless you accept this offer.”

8 73. Defendants’ communications constituted solicitations and these solicitations did
9 not contain the required language or any conspicuous language indicating that these were not
10 bills.

11 74. Defendants’ communications would cause a reasonable recipient to believe that
12 payment was legally required.

13 75. As a direct result of this violation, Plaintiff and the Class were harmed because
14 they paid for unsolicited photos for which they were not obligated to pay.

15 76. Pursuant to Section 1716(g) “Any person damaged by noncompliance with this
16 section, in addition to other remedies, is entitled to damages in an amount equal to three times the
17 sum solicited.”

18 Second Cause of Action

19 Violation of California Civil Code § 1584.5

20 (By Plaintiff against all Defendants)

21 77. Plaintiff incorporates by reference in this cause of action each allegation of all of
22 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
23 Does 1-10, and each of them, as follows:

24 78. California Civil Code § 1584.5 prohibits sellers from offering goods for sale where
25 the offer includes a voluntary and unsolicited sending or providing of goods that were not ordered
26 or requested.

27 79. Defendants are corporations under § 1584.5.

28 80. The school portraits and/or products delivered by Defendants are “goods” under §

1 1584.5.

2 81. During all times relevant, Defendants, or their agents or employees, sent home
3 school portraits and/or products to Plaintiff and the Class that they did not affirmatively order or
4 request.

5 82. Plaintiff and the Class's receipt of these portraits was an unconditional gift to
6 Plaintiff and the Class, and Plaintiff and the Class may use or dispose of the portraits in any
7 manner they see fit without any obligation to Defendants.

8 83. Defendants have continued to send bill statements or otherwise request payment
9 for the portraits from Plaintiff and the Class while concealing that Plaintiff and the Class were not
10 obligated to return or pay for the goods.

11 84. By seeking payment for unordered goods or return them, Defendants were
12 attempting to collect for unordered property, which is a violation of Cal. Civil Code §1584.5.

13 85. As a result of Defendants' violations, Plaintiff and the Class members are entitled
14 to injunctive relief, attorneys' fees and costs.

15 **Third Cause of Action**

16 **Violation of the California Consumers Legal Remedies Act**

17 **(Civ. Code § 1750 et seq.)**

18 **(By Plaintiff against all Defendants)**

19 86. Plaintiff incorporates by reference in this cause of action each allegation of all of
20 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
21 Does 1-10, and each of them, as follows:

22 87. The Consumer Legal Remedies Act ("CLRA"), California Civil Code § 1750, et
23 seq., was designed to protect consumers from unfair and deceptive business practices. To this
24 end, the Consumer Legal Remedies Act sets forth a list of unfair and deceptive acts and practices
25 that are specifically prohibited in any transaction intended to result in the sale or lease of goods or
26 services to a consumer.

27 88. Defendants are "persons" within the meaning of Civil Code §§ 1761(c) and 1770
28 and sell "services" within the meaning of Civil Code §§ 1761(b) and 1770.

1 89. Plaintiff is a consumer within the meaning of Civil Code § 1761(d) and has
2 engaged in a transaction within the meaning of Civil Code §§ 1761(e) and 1770.

3 90. Defendants provide goods and services within the meaning of Civil Code §§
4 1761(b) and 1770.

5 91. California Civil Code §1770(a) provides that “the following unfair methods of
6 competition and unfair or deceptive acts or practices undertaken by any person in a transaction
7 intended to result or which results in the sale or lease of goods or services to any consumer are
8 unlawful” including but not limited to:

9 a. Representing that a transaction confers or involves rights, remedies, or obligations
10 that it does not have or involve, or that are prohibited by law.

11 b. Inserting an unconscionable provision in the contract.

12 92. By reason of the acts and practices alleged in this Complaint, Defendants have
13 engaged in unfair methods of competition and unfair or deceptive acts or practices in a transaction
14 intended to result or which results in the sale of goods or services to any consumer.

15 93. Defendants engaged in these unfair and/or deceptive acts and practices with the
16 intent that they resulted and which did result in the purchase of the photographs and other
17 products at issue in this Complaint.

18 94. Plaintiff reasonably believed, relied, and/or depended on the unlawful, material,
19 false and/or misleading information provided by Defendants that Plaintiff was required to pay for
20 the photographs provided and Plaintiff specifically chose to pay for the photographs based on
21 Defendants’ unlawful, unfair and deceptive conduct.

22 95. As a result of the unlawful, unfair and deceptive acts and practices of Defendants,
23 Plaintiff paid for products for which she had not ordered and was not required to pay. Plaintiff,
24 therefore, suffered monetary harm and is entitled to injunctive and equitable relief, as well as
25 attorneys’ fees and costs of suit.

26 96. At this time, Plaintiff does not currently seek monetary damages as part of their
27 CLRA claim. Following the filing of this Complaint, Plaintiff will mail Defendants a CLRA
28 demand letter in the manner required by statute. If the Defendants do not agree and perform the

1 relief requested in the demand letter within 30 days of its receipt, Plaintiff reserves the right to
 2 amend this Complaint to also then assert a claim for relief for money damages under the CLRA.

3 **Fourth Cause of Action**

4 **Violation of the California Unfair Competition Law**

5 **(Bus. & Prof. Code, § 17200 et seq.)**

6 **(By Plaintiff Against all Defendants)**

7 97. Plaintiff incorporates by reference in this cause of action each allegation of all of
 8 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
 9 Does 1-10, and each of them, as follows:

10 98. Plaintiff brings this cause of action on behalf of herself and the Class as well as on
 11 behalf of the general public, seeking equitable and statutory relief to stop the misconduct of
 12 Defendants, as complained of herein, and to compel disgorgement of all profits obtained by
 13 Defendants through the unfair, unlawful, and/or fraudulent business practices described herein.

14 99. The conduct of Defendants, as alleged herein, constitutes an unlawful business
 15 practice as set forth in Business and Professions Code §§ 17200, *et seq.*

16 100. Specifically, Defendants conducted business activities while failing to comply
 17 with California consumer protection laws as described in this Complaint. Defendants, and each
 18 of them, have intentionally and improperly sent unsolicited goods and sought payment for those
 19 unsolicited goods from Plaintiff and Class members. Section 17200 of the Business and
 20 Professions Code prohibits unfair competition by prohibiting unlawful, unfair, or fraudulent
 21 business practices or acts. Defendants' failure to adopt policies in accordance and/or adherence
 22 with these laws, all of which are binding upon and burdensome to Defendants' competitors,
 23 engenders an unfair competitive advantage for Defendants, thereby constituting an unfair
 24 business practice, as set forth in California Business and Professions Code §§ 17200, *et seq.*

25 101. Defendants' conduct as alleged herein has damaged Plaintiff and the Class
 26 Members by intentionally seeking payment for unsolicited and unordered goods. Such conduct
 27 was substantially injurious to Plaintiff and the Class.

28 102. Under the circumstances alleged herein, it would be inequitable and result in a

1 miscarriage of justice for Defendants to continue to retain the property of Plaintiff and the Class
 2 Members, entitling Plaintiff and the Class Members to restitution of the unfair benefits obtained
 3 and disgorgement of Defendants' ill-gotten gains.

4 103. As a result of Defendants' unlawful and unfair business practices, Plaintiff and
 5 Class Members are entitled to, and hereby do, seek restitution and disgorgement and other
 6 appropriate injunctive and other relief available under California Business and Professions Code
 7 §§ 17200, *et seq.*

8 **Fifth Cause of Action**

9 **Unjust Enrichment**

10 **(By Plaintiff against all Defendants)**

11 104. Plaintiff incorporates the previous allegations by reference in this cause of action
 12 each allegation of all of the foregoing paragraphs as if fully restated herein, and further allege
 13 against Defendants and Does 1-10, and each of them, as follows:

14 105. Defendants have received money from the Plaintiff and class members in
 15 connection with Defendants' conduct in violation of California law. Defendants would be
 16 unjustly enriched if they were permitted to retain those funds, and Defendants should be ordered
 17 to restore said funds to Plaintiff and the class members.

18 106. Plaintiff alleges this unjust enrichment claim in the alternative to relief provided
 19 under any legal claim alleged herein.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiff, on behalf of herself and the Proposed Class and prays for
 22 judgment and the following specific relief against Defendants, jointly and separately as follows:

23 A. That the Court determine and order that this action may be maintained and
 24 certified as a class action under California Code of Civil Procedure § 382 and Civil Code § 1781;

25 B. That the Court order Plaintiff appointed as representative of the Class and appoint
 26 counsel for Plaintiff as class counsel;

27 C. For monetary damages in the amount of three times the sum solicited pursuant to
 28 Civil Code § 1716;

1 D. For injunctive relief pursuant to Civil Code 1584.5;

2 E. That Plaintiff, the Class Members, and represented parties be awarded reasonable
3 attorneys' fees and costs pursuant to Civil Code §§ 1584.5, 1780(e) and/or other applicable law;
4 and,

5 F. That Plaintiffs and the Class Members be awarded prejudgment interest on all
6 damages and other relief awarded;

7 G. That Defendants are found to have violated Business & Professions Code
8 §§ 17200, *et seq.*, and be enjoined to cease and desist from unlawful activities in violation of
9 Business & Professions Code §§ 17200, *et seq.*

10 H. That Defendants be ordered and enjoined to pay restitution to Plaintiff and Class
11 Members due to Defendants' unlawful activities, pursuant to Business & Professions Code
12 §§ 17200, *et seq.*;

13 I. That Defendants be ordered to pay restitution; and

14 J. That Plaintiff, the Class Members, and represented parties receive an award of
15 such other and further relief as this Court may deem appropriate.

16
17 Dated: February 14, 2020 DA VEGA | FISHER | MECHTENBERG LLP

18
19 By: Ted Mechtenberg

20 Ted Mechtenberg, SBN 219602
21 Attorneys for Plaintiff
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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all others similarly situated, hereby demand a trial by jury for all issues so triable.

Dated: February 14, 2020 DA VEGA | FISHER | MECHTENBERG LLP

By: Ted Mechtenberg
Ted Mechtenberg, SBN 219602
Attorneys for Plaintiff

EXHIBIT 1

[HOME](#)[ORDER PICTURES](#)[PHOTOGRAPHY SERVICES](#)[WHO WE ARE](#)

Terms of Service

Terms of Service

Last updated: July 2018

On April 2, 2018, Lifetouch Inc. joined the Shutterfly family of brands. The following Terms of Service were updated to align the combined companies' policies and practices where applicable.

Welcome to Lifetouch and our family of brands. Please read these Terms of Service ("Terms") carefully. They contain the legal terms and conditions that govern your use of and access to our websites, mobile sites, and mobile applications that link to these Terms (collectively, our "Sites and Apps"), as well as our provision of products and services to our customers. If you make a purchase, order products, schedule an appointment or otherwise transact with us through our Sites and Apps, such transactions may also be governed by policies, terms and conditions specific to the product or service that are communicated to you when offering and/or before confirming the transaction, for example terms made part of an e-commerce checkout process or limitations stated in promotional materials. Please review these additional terms before making any transaction with us.

Note to Lifetouch school accounts: Separate terms of service, not these Terms, apply to products and services (including websites, applications and online services) that are designed for the use and benefit of the schools and school districts Lifetouch provides service to for their administrative and educational purposes and which are used by or at the direction of teachers or other school or district employees (a "School Service"). Please refer to the Terms of Service associated with those School Services or contact us through your Lifetouch school account representative for further information.

By visiting any of our Sites and Apps, you are signifying your assent to these Terms and our Privacy Policy, which is incorporated herein by reference. Any products ordered or services used through any of our Sites and Apps are also governed by these Terms. We may revise these Terms from time to time by posting a revised version. YOUR CONTINUED USE OF ANY OF THE SITES AND APPS AFTER WE POST ANY CHANGES WILL CONSTITUTE YOUR ACCEPTANCE OF SUCH CHANGES. IN ADDITION, BY ORDERING OUR PRODUCTS OR USING OUR SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ AND REVIEWED THESE TERMS IN THEIR ENTIRETY, YOU AGREE TO THESE TERMS AND THE PRIVACY POLICY AND THESE TERMS CONSTITUTE BINDING AND ENFORCEABLE OBLIGATIONS ON YOU.

NOTE: THIS TERMS OF SERVICE CONTAINS AN ARBITRATION AND CLASS ACTION WAIVER PROVISION IN THE "ARBITRATION" SECTION BELOW THAT AFFECTS YOUR RIGHTS UNDER THIS TERMS OF SERVICE AND WITH RESPECT TO ANY DISPUTE BETWEEN YOU AND US OR OUR AFFILIATES

1. YOUR USE OF OUR SITES AND APPS

You may access and use our Sites and Apps solely for your personal, noncommercial use. Except as expressly authorized hereunder, our Sites and Apps may not be reproduced, duplicated, copied, sold, resold, visited, reverse-engineered or otherwise exploited for any commercial purpose without our prior written authorization. We reserve the right to alter or discontinue our Sites and Apps, in whole or in part, at any time in our sole discretion.

Subject to and conditioned upon your compliance with these Terms, we grant to you a non-exclusive, non-transferable, limited right and license, without right of sublicense, to access and use our Sites and Apps, including any images, text, graphics, sounds, data, links and other materials incorporated into our Sites and Apps (other than your User Submitted Materials as defined below), solely as made available by us and solely for your own personal purposes. Except as expressly authorized by these Terms, you may not use, reproduce, distribute, modify, transmit or publicly display any portion of our Sites and Apps or create derivative works of any portion our Sites and Apps without our written consent. While using any of our Sites and Apps, you agree not to:

- Access or attempt to access images that are not your images or accounts that you do not own, unless given permission by the image subject (or, in the case of a minor, the image subject's parent or legal guardian);
- Upload or download photographs of people who have not given permission (or, in the case of a minor, whose parent or legal guardian has not given permission) for their photographs to be uploaded or downloaded.
- Defame, abuse, harass, stalk, threaten or otherwise violate the rights of others, including, without limitation, others' privacy rights or rights of publicity;
- Impersonate any person or entity or use any fraudulent, misleading or inaccurate email address or other contact information;
- Restrict or inhibit any other user from using any of our Sites and Apps, including, without limitation, by means of "hacking" or defacing any portion our Sites and Apps;
- Violate any applicable laws or regulations;
- Upload to, transmit through, or display on any of our Sites and Apps (a) any material that is unlawful, fraudulent, threatening, abusive, libelous, defamatory, obscene or otherwise objectionable, or infringes our or any third party's intellectual property or other rights; (b) any confidential, proprietary or trade secret information of any third party; or (c) any advertisements, solicitations, chain letters, pyramid schemes, investment opportunities or other unsolicited commercial communication (except as otherwise expressly permitted by us);
- Engage in spamming;
- Transmit any software or other materials that contain any viruses, worms, trojan horses, defects, or other destructive items;
- Modify, adapt, translate, distribute, reverse engineer, decompile or disassemble any portion of our Sites and Apps; and

- Remove any copyright, trademark or other proprietary rights notices contained in or displayed on any portion of our Sites and Apps
- Display adult nudity or inappropriate child nudity.
- Post objectionable material, such as material containing hate or malicious content or offers for adult services, or material inciting or advocating terrorism or violence

If you fail to comply with the above rules, such failure will constitute a violation of these Terms, and in addition to any other rights or remedies we may have, we may immediately terminate your access to and use of our Sites and Apps.

Some features of our Sites and Apps may enable you to send and receive transmissions. You acknowledge that we have no responsibility or liability for any transmissions, and/or any content included in such transmissions, sent or received by you. We reserve the right, in our sole discretion and at any time, to set limits on the number and size of any transmissions sent by or received through our Sites and Apps and/or the amount of storage space available for transmissions or for any feature made available through our website.

1. YOUR MEMBER ACCOUNT

You may create a member account with any of our Sites and Apps by registering your name, providing certain information about yourself, and creating a password. You agree that you will provide complete, current and accurate information about yourself as requested, and that you will keep that information up to date. You are responsible for safeguarding the confidentiality of your username and password that you use to access your member account on our Sites and Apps. You agree not to disclose your username or password to any third party. YOU AGREE THAT YOU ARE SOLELY AND FULLY RESPONSIBLE FOR ANY ACTIVITIES OR ACTIONS TAKEN UNDER YOUR ACCOUNT, WHETHER OR NOT YOU HAVE AUTHORIZED SUCH ACTIVITIES OR ACTIONS. You will immediately notify us of any unauthorized use of your account on any of our Sites and Apps.

In order to create a member account with any of our Sites and Apps, you must be at least 18 years of age. You represent to us that you are at least 18 years old. If you are not, please do not set up an account with any of our Sites and Apps.

2. MAKING PURCHASES

If you wish to purchase any products or services through any of our Sites and Apps, we will ask you to supply certain information applicable to your purchase, including, without limitation, payment and other information. Any such information will be treated as described in our Privacy Policy. All information that you provide to us or our third party payment processor must be accurate, current and complete. YOU REPRESENT AND WARRANT THAT YOU HAVE THE LEGAL RIGHT TO USE ANY CREDIT CARD(S) OR OTHER PAYMENT MEANS USED TO INITIATE ANY TRANSACTION. You agree to pay all charges incurred by you or any users of your account and credit card (or other applicable payment mechanism) at the prices in effect when such charges are incurred. You will also be responsible for paying any applicable taxes relating to your purchases. Verification of information applicable to a purchase may be required prior to our acceptance of any order.

Descriptions, images, references, features, content, specifications, products, price and availability of any products or services are subject to change without notice, and our current prices can be found on our Sites and Apps. We make reasonable efforts to accurately display the attributes of our products, including the applicable colors; however, the actual color you see will depend on your computer system, and we cannot guarantee that your computer will accurately display such colors. The inclusion of any products or services on our Sites and Apps at a particular time does not imply or warrant that these products or services will be available at any time.

It is your responsibility to ascertain and obey all applicable local, state, federal and international laws (including minimum age requirements) in regard to the possession, use and sale of any item purchased through our Sites and Apps. By placing an order, you represent that the products ordered will be used only in a lawful manner. We reserve the right, with or without prior notice, to limit the available quantity of or discontinue any product or service; to honor, or impose conditions on the honoring of, any coupon, coupon code, promotional code or other similar promotions; to bar any user from making any or all purchase(s); and/or to refuse to provide any user with any product or service.

Title and risk of loss for any purchases pass to you upon our delivery to our carrier. We reserve the right to ship partial orders (at no additional cost to you), and the portion of any order that is partially shipped may be charged at the time of shipment.

3. PHOTO ARCHIVING

Our goal is to make the photos Lifetouch creates available to our customers for years to come. In partnership with our parent company Shutterfly Inc., Lifetouch offers photo archiving for its customers in many of its photography programs at no additional cost. When you purchase photos from Lifetouch, we may securely retain a digital copy of one or more of your source photos for you to claim and archive in your Shutterfly account, if you wish to do so. By placing an order for Lifetouch photos and/or by registering as a customer on one or more of our websites, you are giving us your permission to retain any and all of your photos for this purpose as described in these terms of service. You may opt out at any time in accordance with the photo deletion process outlined below. If you do elect to claim and archive a Lifetouch photo in your photo library at Shutterfly.com, the terms and policies applicable to Shutterfly.com, not these Terms, define that service and your options, which may be different from those outlined here.

Please note that Shutterfly archiving services are available only to customers who purchase Lifetouch photos, whether captured within schools, churches, organizations, portrait studios or other professional photography outlets we operate. Unless purchased by a parent (or by someone with whom the parent has shared the photo), we retain school photos only as long as necessary to satisfy our obligations to the schools we serve.

By placing an order for Lifetouch photos and/or by registering as a customer on one or more of our websites, you also agree that Lifetouch may link to your account photos we capture in the future of a person whose photo you have purchased in the past, whether you purchase such future photos or not. For example, if you purchase your child's first grade school photo, we will store that photo and, if we return to photograph your child the following year, we may automatically associate that photo with your Lifetouch account. If you have opted into Shutterfly archiving, we will make such future images available in your Shutterfly account.

You also agree that we may use your contact information to notify you when such future photos are available, and that we may present to you, via email or other channels of communication or within your Lifetouch or Shutterfly account, personalized photographic products that feature your photos from time to time for your consideration. For example, we may show you how your photos would look on a specialty product such as a canvas wall hanging or holiday card. You may opt out of receiving such communications and change your contact preferences within your account at any time.

Your options. If you do not want us to retain your photos for you to claim on your Shutterfly account, you may contact us at (800) 736-4753 to opt out. Before we can fulfill your request, we may require certain information from you. Once we have validated your request, we will remove the affected photo(s) from our image repository. Please be aware, however, that if you opt out, Lifetouch may still retain your photo for other limited purposes – for example, if we are contractually required to provide photographic products and services (such as yearbook photos or the yearbook itself) to a school or other organization you are affiliated with. We reserve the right to

deny a request to remove all copies of your photos from our systems to the extent that doing so would be unreasonably burdensome or would cause us to violate a law, court order or a contractual commitment to another customer or to the organization that engaged us to provide photography that included your photo. Also, please be aware that, if you shared your photo with other purchasers, your photo deletion request will not affect any photos retained in others' photo libraries or those purchasers' archiving preferences.

4. CONTESTS AND SWEEPSTAKES

In addition to the terms and conditions of these Terms, any contests, sweepstakes, surveys, games or similar promotions (collectively, "Promotions") made available through our Sites and Apps may be governed by specific rules that are separate from this Agreement. By participating in any such Promotion, you will become subject to those rules, which may vary from these Terms. We urge you to review any specific rules applicable to a particular Promotion, which will be linked from such Promotion, and to review our Privacy Policy which, in addition to these Terms, governs any information you submit in connection with such Promotion. To the extent that the terms and conditions of such rules conflict with these Terms, the terms and conditions of such rules will control. Notwithstanding the foregoing, any dispute, claim or controversy arising out of or relating in any way to the Lifetouch service and these Terms of Service will be subject to binding arbitration pursuant to the Arbitration Agreement contained in Paragraph 16 below.

5. THIRD-PARTY SITES, SOFTWARE AND SERVICES

Our Sites and Apps may link to sites, software or services owned or operated by unaffiliated third parties ("Third Party Properties"). We have not reviewed all of the Third Party Properties to which you may be directed and we have no control over such Third Party Properties. We have no control over and are not responsible for (a) the content and operation of such Third Party Properties, or (b) the privacy or other practices of such Third Party Properties. The fact that our Sites and Apps link you to such Third Party Properties does not indicate any approval or endorsement of any such Third Party Properties. We direct you to such Third Party Properties only as a convenience. You are responsible for the costs associated with such Third Party Properties, including any applicable license fees and service charges. Accordingly, we strongly encourage you to become familiar with the terms of use and practices of any such Third Party Properties.

Other sites may provide links to our Sites and Apps with or without our authorization. We do not endorse such sites, and are not and will not be responsible or liable for any links from those sites to our Sites and Apps, any content, advertising, products or other materials available on or through such other sites, or any loss or damages incurred in connection therewith.

YOU AGREE THAT YOUR USE OF THIRD PARTY SITES, SOFTWARE AND SERVICES INCLUDING, WITHOUT LIMITATION, YOUR USE OF ANY CONTENT, INFORMATION, DATA, ADVERTISING, PRODUCTS, OR OTHER MATERIALS ON OR AVAILABLE THROUGH SUCH SITES, SOFTWARE AND SERVICES, IS AT YOUR OWN RISK AND IS SUBJECT TO THE TERMS AND CONDITIONS OF USE APPLICABLE TO SUCH SITES, SOFTWARE AND SERVICES.

6. MATERIALS SUBMITTED BY CUSTOMER

A Site or App may include interactive features that allow you to upload, submit, share or transmit (collectively "post") to third parties your photographs, digital files, personal information, comments or other content (collectively, "User Submitted Materials"). User Submitted Materials are subject to the following terms and conditions:

- You will retain ownership of such User Submitted Materials, and you grant us and our designees a worldwide, non-exclusive, transferable, royalty-free, perpetual irrevocable right and license, with right of sublicense (through multiple tiers), to use, reproduce, distribute (through multiple tiers), create derivative

works of and publicly display such User Submitted Materials solely in connection with the production or provision of any product or service you request or to show you how your User Submitted Materials would appear in our products or services. For example, when you place an order for a product, we will prepare, manipulate (if necessary), and transmit the User Submitted Materials for production, packaging and shipment. Similarly, if you want to share a photo book with your friends and family, we will accommodate your request by making your photographs available to your friends and family to download and/or to use and create projects of their own, and to purchase products with those photographs.

- Please note that, while you retain ownership of your User Submitted Materials, any template or layout in which you arrange or organize such User Submitted Materials through tools and features made available through any of our Sites and Apps are not proprietary to you, and the rights to such template or layout will remain with us.
- You represent and warrant that you own or otherwise possess all necessary rights with respect to the User Submitted Materials, and that the User Submitted Materials do not and will not infringe, misappropriate, use or disclose without authorization or otherwise violate any copyright, trade secret right or other intellectual property or other property right of any third party, and that the User Submitted Materials are not unlawful, fraudulent, threatening, abusive, libelous, defamatory, obscene or otherwise objectionable.
- You consent to the use of your likeness, and you have obtained the written consent, release, and/or permission of every identifiable individual who appears in User Submitted Materials to use such individual's likeness, for purposes of using and otherwise exploiting the User Submitted Materials in the manner contemplated by these Terms, or, if any such identifiable individual is under the age of eighteen (18), you have obtained such written consent, release and/or permission from such individual's parent or guardian (and you agree to provide to us a copy of any such consents, releases and/or permissions upon our request). If you do submit a submission that contains the likeness of an identifiable individual under the age of eighteen (18), we strongly encourage you not to include any identifying information (such as the individual's name or address) with such User Submitted Materials.
- You agree that we may (but are not obligated to) filter any User Submitted Materials (including, without limitation, deleting or replacing expletives or other harmful or offensive language), refuse to use any User Submitted Materials (including, without limitation, suspending processing and shipping of any order relating to any User Submitted Materials) and/or disclose any User Submitted Materials and the circumstances surrounding the use thereof, to any third party in order to provide the applicable products or services, to enforce these Terms or to comply with legal obligations or governmental requests.
- You agree to indemnify and hold us, our directors, officers, shareholders, employees, contractors, agents, representatives, affiliates, and third party users harmless from and against any and all claims, causes of action, liabilities, damages, losses, expenses and costs (including, without limitation, attorneys' fees) that arise directly or indirectly out of or from: (i) your violation of these Terms, any other agreement or terms of use with us, any representation or warranty contained herein or therein or any applicable law; (ii) your User Submitted Materials; (iii) your activities in connection with obtaining any products or services from us, or (iv) any activity related to access to or use of your account by you or any other person.
- User Submitted Materials that violate these Terms may be removed from our Sites and Apps; provided, however, that we have no obligation to remove User Submitted Materials in response to user reports or requests. We are not responsible for, and will have no liability for, the removal, non-removal or loss of any User Submitted Materials from our Sites and Apps. We recommend you keep back-up copies of your User Submitted Materials on your hard drive or other personal system.

7. COPYRIGHT ISSUES

While we are not obligated to review User Submitted Materials for copyright infringement, we are committed to protecting copyrights and expect users of our Sites and Apps to do the same. The Digital Millennium Copyright Act of 1998 (the "DMCA") provides recourse for copyright owners who believe that material appearing on the Internet infringes their rights under U.S. copyright law. If you believe in good faith that any material used or displayed on or through our Sites and Apps infringes your copyright, you (or your agent) may send us a notice requesting that the material be removed, or access to it blocked. The notice must include the following information: (a) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (b) identification of the copyrighted work claimed to have been infringed (or if multiple copyrighted works are covered by a single notification, a representative list of such works); (c) identification of the material that is claimed to be infringing or the subject of infringing activity, and information reasonably sufficient to allow us to locate the material on our Sites and Apps; (d) the name, address, telephone number and email address (if available) of the complaining party; (e) a statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law; and (f) a statement that the information in the notification is accurate and, under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. If you believe in good faith that a notice of copyright infringement has been wrongly filed against you, the DMCA permits you to send us a counter-notice. Notices and counter-notices must meet the then-current statutory requirements imposed by the DMCA; see <http://www.copyright.gov> for details. DMCA notices and counter-notices regarding our Sites and Apps should be sent to:

Lifetouch Inc.

Law Department Attention: Copyrights
11000 Viking Drive
Eden Prairie, MN 55344
Email: copyright@lifetouch.com

We will have the right, at any time and in our sole discretion, to block links to our Sites and Apps through technological or other means without prior notice.

8. DISCLAIMER OF WARRANTIES

EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED IN THESE TERMS, OUR PRODUCTS AND SERVICES, INCLUDING ALL MATERIALS INCORPORATED THEREIN, ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, WE AND OUR DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES, CONTRACTORS, AGENTS, REPRESENTATIVES AND AFFILIATES DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, ACCURACY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. NOTE: CERTAIN APPLICABLE LAW MAY NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. NO STATEMENT OF OURS OR ANY OF OUR DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES, CONTRACTORS, AGENTS, REPRESENTATIVES AND AFFILIATES SHALL CREATE ANY WARRANTY OTHER THAN THOSE EXPRESSLY CONTAINED IN THESE TERMS.

9. LIMITATION OF LIABILITY

TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, NEITHER WE NOR ANY OF OUR DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES, CONTRACTORS, AGENTS, REPRESENTATIVES, OR AFFILIATES (THE

"LIFETOUCH PARTIES") SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, PROFITS, USE OR DATA), WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER LEGAL THEORY, EVEN IF THE LIFETOUCH PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR RELATING IN ANY WAY TO OUR PROVISION OF (OR FAILURE TO PROVIDE) PRODUCTS OR SERVICES, OR FROM UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR SUBMISSIONS OR DATA, EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED ITS ESSENTIAL PURPOSE. YOU SPECIFICALLY ACKNOWLEDGE THAT THE LIFETOUCH PARTIES ARE NOT LIABLE FOR ANY DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF OTHER USERS OR THIRD PARTIES AND THAT THE RISK OF INJURY FROM THE FOREGOING RESTS ENTIRELY WITH YOU. FURTHERMORE, THE LIFETOUCH PARTIES WILL HAVE NO LIABILITY TO YOU OR TO ANY THIRD PARTY FOR ANY THIRD-PARTY CONTENT UPLOADED. YOUR SOLE AND EXCLUSIVE REMEDY FOR DISSATISFACTION WITH PRODUCTS IS TO OBTAIN A REFUND, AND YOUR SOLE AND EXCLUSIVE REMEDY FOR DISSATISFACTION WITH SERVICES IS TO STOP USING THE SERVICES. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, THE MAXIMUM LIABILITY OF THE LIFETOUCH PARTIES ARISING OUT OF OR RELATING IN ANY WAY TO OUR PROVISION OF (OR FAILURE TO PROVIDE) PRODUCTS OR SERVICES SHALL BE THE ACTUAL PRICE PAID THEREFORE BY YOU. NOTE: CERTAIN JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL, CONSEQUENTIAL OR CERTAIN OTHER TYPES OF DAMAGES, SO SOME OF THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU.

10. POLICY FOR IDEA SUBMISSION

Many of our customers are interested in submitting ideas and suggestions for products and services to be used at our Sites and Apps, either independently of, or in conjunction with, our internally developed concepts. We appreciate our customers' interest in improving our Sites and Apps; however, please note that any such ideas or suggestions that you submit will be owned by us, and you hereby irrevocably assign any intellectual property rights in such ideas and suggestions to us. If you intend to retain any intellectual property rights in your ideas and suggestions (patent, trade secrets, copyright, trademark, etc.), please do not submit them to us without our prior written approval.

You can inquire regarding such approval by sending a letter to Lifetouch Inc., Attn: Idea Submission, Lifetouch Inc., 11000 Viking Drive, Eden Prairie, MN 55344. If we are interested in pursuing any idea or suggestion of yours, we will contact you. Please note that an additional legal agreement may be required by us in order to evaluate your idea or suggestion.

11. NOTICE FOR CALIFORNIA USERS

This notice is for our California users: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted by mail at 1625 North Market Blvd., Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

12. INTELLECTUAL PROPERTY NOTICES

Except as specifically authorized through the sale of a product or service, or on a written release signed by us, images and information from this site may not be reproduced in any way. All images created by Lifetouch Inc. and its subsidiaries are the property of Lifetouch Inc. and its subsidiaries, our licensing partners, or are used with permission.

Our Sites and Apps are ©Lifetouch Inc. All rights reserved.

All trademarks and service marks on any of our Sites and Apps not owned by us are the property of their respective owners. The trade names, trademarks and service marks owned by us, whether registered or unregistered, may not be used in connection with any product or service that is not ours, in any manner that is likely to cause confusion. Nothing contained on any of our Sites and Apps should be construed as granting, by implication, estoppel or otherwise, any license or right to use any of our trade names, trademarks or service marks without our express prior written consent.

13. JURISDICTIONAL ISSUES

Our Sites and Apps are controlled and operated from the United States. Our Sites and Apps are not subject to the laws or jurisdiction of any state, country or territory other than that of the United States. We does not represent or warrant that any of our Sites and Apps, products, and/or services or any part thereof is appropriate or available for use in any particular jurisdiction. Those who choose to access our Sites and Apps do so on their own initiative and at their own risk, and are responsible for complying with all applicable laws, rules and regulations. We may limit the availability of our Sites and Apps, in whole or in part, to any person, geographic area or jurisdiction we choose, at any time and in our sole discretion.

14. MISCELLANEOUS

These Terms are governed by and construed in accordance with the laws of the State of California, United States of America, without regards to its conflict of law provisions. Subject to and without waiving or limiting the mandatory Arbitration Agreement set forth in paragraph 16, to the extent you or Lifetouch are before a court (for instance, to enforce an arbitrator's award), you agree to submit to the exclusive jurisdiction of any State or Federal court located in the County of Santa Clara, California, United States of America, and waive any jurisdictional, venue or inconvenient forum objections to such courts. If any provision of these Terms, or the application thereof to any person, place or circumstance, is invalid, void or otherwise unenforceable, such provision will be enforced to the maximum extent possible, or, if incapable of such enforcement, will be deemed to be deleted from these Terms, and the remainder of these Terms and such provisions as applied to other persons, places and circumstances will remain in full force and effect. No waiver by either party of any breach or default hereunder will be deemed to be a waiver of any preceding or subsequent breach or default, nor will any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy. This is the entire agreement between us relating to the subject matter herein and supersedes any and all prior or contemporaneous written or oral agreements between us with respect to such subject matter. These Terms are not assignable, transferable or sublicenseable by you except with our prior written consent. These Terms may not be modified or amended except as set forth in the introductory section of these Terms. Any heading, caption or section title contained in these Terms is inserted only as a matter of convenience and in no way defines or explains any section or provision hereof.

15. TERMINATION

Either you or we may terminate your access to our Sites and Apps and to your account at any time, with or without cause, and with or without prior notice. Without limiting the foregoing, we may terminate your access if you violate these Terms. Upon termination for any reason, your right to access and/or use our Sites and Apps will immediately cease. Upon termination, you will have no further access to, and we may delete, any information, files or materials in or related to your account, including, without limitation, any User Submitted Materials. Upon termination, we may delete all information, files and materials related to your account, including any User Submitted Materials, and we will have no obligation whatsoever to save or make any such information, files or materials available to you. You agree that we will have no liability whatsoever to you or any other party as a result of a termination of your access our Sites and Apps and to your account and/or as a result of the deletion or loss of any information, files or materials in or related to your account.

16. ARBITRATION AGREEMENT

If you are a Lifetouch customer in the United States (including its possessions and territories), you and Lifetouch agree that any dispute, claim or controversy arising out of or relating in any way to the Lifetouch service, these Terms of Service and this Arbitration Agreement, shall be determined by binding arbitration or in small claims court. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts.

Arbitrators can award the same damages and relief that a court can award. You agree that, by agreeing to these Terms of Service, the U.S. Federal Arbitration Act governs the interpretation and enforcement of this provision, and that you and Lifetouch are each waiving the right to a trial by jury or to participate in a class action. This arbitration provision shall survive termination of this Agreement and the termination of your Lifetouch account.

If you elect to seek arbitration or file a small claim court action, you must first send to Lifetouch, by certified mail, a written Notice of your claim ("Notice"). The Notice to Lifetouch must be addressed to: General Counsel, Lifetouch, Inc., 11000 Viking Drive, Eden Prairie, MN 55344 ("Notice Address"). If Lifetouch initiates arbitration, it will send a written Notice to the email address used for your account. A Notice, whether sent by you or by Lifetouch, must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). If Lifetouch and you do not reach an agreement to resolve the claim within 30 days after the Notice is received, you or Lifetouch may commence an arbitration proceeding or file a claim in small claims court.

If you elect to seek arbitration or file a small claim court action, you must first send to Lifetouch, by certified mail, a written Notice of your claim ("Notice"). The Notice to Lifetouch must be addressed to: General Counsel, Lifetouch, Inc., 11000 Viking Drive, Eden Prairie, MN 55344 ("Notice Address"). If Lifetouch initiates arbitration, it will send a written Notice to the email address used for your account. A Notice, whether sent by you or by Lifetouch, must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). If Lifetouch and you do not reach an agreement to resolve the claim within 30 days after the Notice is received, you or Lifetouch may commence an arbitration proceeding or file a claim in small claims court.

You may download or copy a form Notice and a form to initiate arbitration at www.adr.org. If you are required to pay a filing fee, after Lifetouch receives notice at the Notice Address that you have commenced arbitration, Lifetouch will promptly reimburse you for your payment of the filing fee, unless your claim is for greater than US\$10,000, in which event you will be responsible for filing fees.

The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by this Agreement, and will be administered by the AAA. The AAA Rules and Forms are available online at www.adr.org, by calling the AAA at 1-800-778-7879, or by writing to the Notice Address. The arbitrator is bound by the terms of this Agreement. All issues are for the arbitrator to decide, including issues relating to the scope, interpretation and enforceability of this arbitration agreement. Unless Lifetouch and you agree otherwise, any arbitration hearings will take place in the county of your residence.

If your claim is for US\$10,000 or less, we agree that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds US\$10,000, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. If the arbitrator issues you an award that is greater than the value of Lifetouch's last written

settlement offer made before an arbitrator was selected (or if Lifetouch did not make a settlement offer before an arbitrator was selected), then Lifetouch will pay you the amount of the award or US\$1,000, whichever is greater. Except as expressly set forth herein, the payment of all filing, administration and arbitrator fees will be governed by the AAA Rules.

YOU AND LIFETOUCH AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and Lifetouch agree otherwise, the arbitrator may not consolidate more than one person's claims with your claims, and may not otherwise preside over any form of a representative or class proceeding. If this waiver of the right to bring class or representative claims is found to be unenforceable, then the entirety of this Arbitration Agreement shall be null and void.

The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim, except that the Arbitrator may award the excluded forms of relief if these exclusions are prohibited by law.

If any term, condition or provision of this Arbitration Agreement is held by an Arbitrator to be invalid, void or otherwise unenforceable, such provision will be enforced to the maximum extent possible, or, if incapable of such enforcement, will be deemed deleted from the Arbitration Agreement, and the remainder of the Arbitration Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated, except that the Arbitrator shall not under any circumstance preside over any class or representative claim without the consent of you and Lifetouch.

Questions or Comments. If you have any questions or comments related to these Terms of Service or a Site or App that links to them, please contact us through any means described in the "Contact Us" features of this Website or by writing to Lifetouch Inc., 11000 Viking Drive, Eden Prairie, MN 55344, attention: Corporate Communications.

Order Pictures

Preschool

School K-12

Prestige | Senior

Yearbooks

Sports

Commencements

Special Events

Church

JCPenney Portraits

Photography Services

Preschool

School K-12

Prestige | Senior

Yearbooks

Sports

Commencements

Special Events

Church

Business Headshots

JCPenney Portraits

Lifetouch.

Contact us

Who we are

Careers

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

Shutterfly, Inc.; Lifetouch, Inc.; Lifetouch National School Studios, Inc.; and Does 1-10

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

Shawna Allen

E-FILED FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
2/14/2020 11:09 AM
Clerk of Court
Superior Court of CA,
County of Santa Clara
20CV363509
Reviewed By: D Harris
Envelope: 4031893

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
Santa Clara Superior Court

CASE NUMBER: (Número del Caso):
20CV363509

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Ted Mechtenberg, Da Vega Fisher Mechtenberg LLP, 1567 Spinnaker Drive, Suite 201, Ventura, CA 93001

DATE: 2/14/2020 11:09 AM Clerk of Court Clerk, by D Harris, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☒ on behalf of (specify): LIFETOUCH, INC.
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
- ☐ by personal delivery on (date)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
191 N. FIRST STREET
SAN JOSE, CA 95113-1090

Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 3/9/2020 10:12 AM
Reviewed By: R. Walker
Case #20CV363509
Envelope: 4138408

TO: FILE COPY

RE: Allen v. Shutterfly, Inc., et al.
CASE NUMBER: **20CV363509**

**ORDER DEEMING CASE COMPLEX AND STAYING DISCOVERY
AND RESPONSIVE PLEADING DEADLINE**

WHEREAS, the Complaint was filed by Plaintiff **SHAWNA ALLEN** ("Plaintiff") in the Superior Court of California, County of Santa Clara, on **February 14, 2020** and the matter was assigned to Department **3** (Complex Civil Litigation), the **Honorable Patricia M. Lucas** presiding, pending a ruling on the complexity issue;

IT IS HEREBY ORDERED that:

The Court determines that the above-referenced case is **COMPLEX** within the meaning of California Rules of Court 3.400. The matter remains assigned, for all purposes, including discovery and trial, to Department **3** (Complex Civil Litigation), the **Honorable Patricia M. Lucas** presiding.

The parties are directed to the Court's local rules and guidelines regarding electronic filing and to the Complex Civil Guidelines, which are available on the Court's website.

Pursuant to California Rules of Court, Rule 3.254, the creation and maintenance of the Master Service List shall be under the auspices of (1) Plaintiff **SHAWNA ALLEN**, as the first-named party in the Complaint, and (2) the first-named party in each Cross-Complaint, if any.

Pursuant to Government Code section 70616(c), each party's complex case fee is due within ten (10) calendar days of this date.

Plaintiff shall serve a copy of this Order on all parties forthwith and file a proof of service within seven (7) days of service.

Any party objecting to the complex designation must file an objection and proof of service within ten (10) days of service of this Order. Any response to the objection must be filed within seven (7) days of service of the objection. The Court will make its ruling on the submitted pleadings.

The Case Management Conference remains set for **June 12, 2020 at 10:00 a.m. in Department 3** and all counsel are ordered to attend in person.

Counsel for all parties are ordered to meet and confer in person at least 15 days prior to the First Case Management Conference and discuss the following issues:

1. Issues related to recusal or disqualification;
2. Issues of law that, if considered by the Court, may simplify or further resolution of the case, including issues regarding choice of law;

3. Appropriate alternative dispute resolution (ADR), for example, mediation, mandatory settlement conference, arbitration, mini-trial;
4. A plan for preservation of evidence and a uniform system for identification of documents throughout the course of this litigation;
5. A plan for document disclosure/production and additional discovery; which will generally be conducted under court supervision and by court order;
6. Whether it is advisable to address discovery in phases so that information needed to conduct meaningful ADR is obtained early in the case (counsel should consider whether they will stipulated to limited merits discovery in advance of certification proceedings), allowing the option to complete discovery if ADR efforts are unsuccessful;
7. Any issues involving the protection of evidence and confidentiality;
8. The handling of any potential publicity issues;

Counsel for Plaintiff is to take the lead in preparing a Joint Case Management Conference Statement to be filed 5 calendars days prior to the First Case Management Conference, and include the following:

1. A Statement as to whether additional parties are likely to be added and a proposed date by which all parties must be served;
2. Service lists identifying all primary and secondary counsel, firm names, addresses, telephone numbers, email addresses and fax numbers for all counsel;
3. A description of all discovery completed to date and any outstanding discovery as of the date of the conference;
4. Applicability and enforceability of arbitration clauses, if any;
5. A list of all related litigation pending in other courts, including Federal Court, and a brief description of any such litigation, and a statement as to whether any additional related litigation is anticipated (CRC 3.300);
6. A description of factual and legal issues – the parties should address any specific contract provisions the interpretation of which may assist in resolution of significant issues in the case;
7. The parties' tentative views on an ADR mechanism and how such mechanism might be integrated into the course of the litigation;
8. Whether discovery should be conducted in phases or limited; and if so, the order of phasing or types of limitations of discovery. If this is a class action lawsuit, the parties should address the issue of limited merits discovery in advance of class certification motions.

To the extent the parties are unable to agree on the matters to be addressed in the Joint Case Management Conference Statement, the positions of each party or of various parties should be set forth separately and attached to this report as addenda. The parties are encouraged to propose, either jointly or separately, any approaches to case management they believe will promote the fair and efficient handling of this case. The Court is particularly interested in identifying potentially dispositive or significant threshold issues the early resolution of which may assist in moving the case toward effective ADR and/or a final disposition.

STAY ON DISCOVERY AND RESPONSIVE PLEADING DEADLINE Pending further order of this Court, the service of discovery and the obligation to respond to any outstanding discovery is stayed. However, Defendant(s) shall file a Notice of Appearance for purposes of identification of counsel and preparation of a service list. The filing of such a Notice of Appearance shall be without prejudice to the later filing of a motion to quash to contest jurisdiction. Parties shall not file or serve responsive pleadings, including answers to the complaint, motions to strike, demurrers, motions for

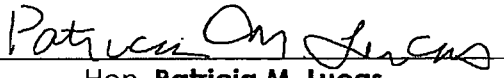
change of venue and cross-complaints until a date is set at the First Case Management Conference for such filings and hearings.

This Order is issued to assist the Court and the parties in the management of this "Complex" case through the development of an orderly schedule for briefing and hearings. This Order shall not preclude the parties from continuing to informally exchange documents that may assist in their initial evaluation of the issues presented in this Case.

Plaintiff shall serve a copy of this Order on all the parties in this matter forthwith.

SO ORDERED.

Date: _____
Signed: 3/6/2020 03:02 PM


Hon. **Patricia M. Lucas**
Judge of the Superior Court

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408) 882-2700, or use the Court's TDD line, (408) 882-2690 or the Voice/TDD California Relay Service, (800) 735-2922.

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Ted Mechtenberg, SBN 219602 Da Vega Fisher Mechtenberg LLP 640 W. California Ave., Suite 210 Sunnyvale, CA 94086 TELEPHONE NO: 408.758.8974 FAX NO: 877.535.9358 ATTORNEY FOR (Name): Plaintiff Shawna Allen and Proposed Class		Electronically Filed by Superior Court of CA, County of Santa Clara, on 2/14/2020 11:09 AM Reviewed By: D Harris Case #20CV363509 Envelope: 4031893
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 N. First Street MAILING ADDRESS: 191 N. First Street CITY AND ZIP CODE: San Jose 95113 BRANCH NAME: Downtown Court House		
CASE NAME: Allen v. Lifetouch, etc.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	
Complex Case Designation: <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		CASE NUMBER: 20CV363509 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case.		
Auto/Tort: <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort: <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort: <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment: <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract: <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property: <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer: <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review: <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment: <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint: <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition: <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input checked="" type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): Five
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: February 14, 2020
 Ted Mechtenberg

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach—Seller
Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

E-FILED
2/14/2020 11:09 AM
Clerk of Court
Superior Court of CA,
County of Santa Clara
20CV363509
Reviewed By: D Harris

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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

SHAWNA ALLEN, individually and on
behalf and all others similarly situated,

Plaintiffs,

vs.

SHUTTERFLY, INC., LIFETOUCH, INC.,
LIFETOUCH NATIONAL SCHOOL
STUDIOS, INC., and DOES 1-10,
inclusive,

Defendants.

Case No. 20CV363509

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF:**

- (1) SOLICITATION OF PAYMENT FOR
UNORDERED GOODS (Civ. Code §
1716);**
- (2) VIOLATION OF CIV. CODE § 1584.5;**
- (3) VIOLATION OF THE CALIFORNIA
CONSUMERS LEGAL REMEDIES ACT
(Civ. Code § 1750)**
- (4) UNFAIR COMPETITION (Bus. & Prof.
Code 17200 et seq.)**
- (5) UNJUST ENRICHMENT**

DEMAND FOR JURY TRIAL

Individual and Representative Plaintiff Shawna Allen ("Plaintiff" or "Allen") brings this
action on behalf of herself and all others similarly situated ("the Class"), and on information and
belief alleges against Defendants Shutterfly, Inc. ("Shutterfly"), Lifetouch, Inc. ("Lifetouch"),
Lifetouch National School Studios, Inc. ("Lifetouch NS"), and Does 1-10 (collectively

1 “Defendants”) the following:

2 **NATURE OF THE CASE**

3 1. Defendants are in the business of selling school pictures. They contract with
4 schools to provide bi-annual portrait sessions within schools and sell the portraits to students’
5 parents and guardians.

6 2. The pictures that Defendants take in the Spring are regularly sold under a so-called
7 “Family Approval” model whereby students’ portraits and/or products printed with their portraits
8 are sent home with the students. They are accompanied by written materials directing parents and
9 guardians to purchase the portraits and/or products or return them to school.

10 3. As explained in detail below, Defendants sent unordered portraits and/or products
11 home with Plaintiff’s children and sought payment for them in violation of California law and the
12 laws of the states across the nation.

13 4. Each spring of the last three years, Defendants offered portraits of Plaintiff’s
14 children for sale. Included in Defendants’ offer were unsolicited portraits of Plaintiff’s children
15 that were not actually ordered or requested by Plaintiff, which are deemed an unconditional gift.
16 Each of the last three springs, however, Defendants sent Plaintiff statements requesting payment
17 for the portraits. This practice is in direct violation of Cal. Civil Code §§ 1584.5 and 1716, the
18 Consumers Legal Remedies Act, Cal. Civ. Code § 1750, and the California Unfair Competition
19 Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*

20 5. This case is brought as a class action under California Code of Civil Procedure
21 (“CCP”) §382 and Civil Code § 1781. This class action lawsuit arises out of Defendants’ policy
22 and practice of illegally sending unordered portraits and other products to Plaintiff and class
23 members and requesting payment for these unsolicited goods.

24 6. As a result of Defendants’ violations, thousands of individuals throughout the
25 United States including individuals within the state of California received unsolicited portraits of
26 their children that were not ordered or requested.

27 **The Parties**

28 7. **Plaintiff Shawna Allen** (“Allen”) is an individual who resides in the state of

1 Kansas. During all times relevant she has resided in Olathe, Johnson County, Kansas.

2 8. **Defendant Shutterfly, Inc.** is incorporated in Delaware. Defendant Shutterfly,
3 Inc. has its principal place of business at 2800 Bridge Parkway, Redwood City, San Mateo
4 County, California. Defendant Shutterfly, Inc. can be served via its registered agent, The
5 Prentice-Hall Corporation System, Inc., 251 Little Falls Drive, Wilmington, DE 19808.

6 9. **Defendant Lifetouch, Inc.** and its wholly owned subsidiary, **Defendant**
7 **Lifetouch National School Studios, Inc.**, are Minnesota corporations with their principal place
8 of businesses in Minnesota. They may be served via their registered agent, Corporation Service
9 Company, located at 2345 Rice Street, Suite 230, Roseville, MN 55113.

10 **Fictitious Defendants**

11 10. Defendants Does 1-10, inclusive, are sued herein under fictitious names. Their
12 true names and capacities are unknown to Plaintiff at this time. When their true names and
13 capacities are ascertained, Plaintiff will amend this Complaint by inserting their true names and
14 capacities. Plaintiff is informed and believes, and thereon alleges that each of the fictitiously-
15 named Defendants are responsible in some manner for the occurrences alleged herein and that
16 Plaintiff's and the proposed Class Members' damages and penalties alleged herein were
17 proximately caused by such Defendants.

18 **Agency**

19 11. Plaintiffs are informed, believe, and thereon allege that each of the Defendants
20 herein was, at all times relevant in this action, the agent, employee, representing partner, officer,
21 director, subsidiary, affiliate, parent corporation, successor and/or predecessor in interest and/or
22 joint venture of the remaining Defendants and was acting within the course and scope of that
23 relationship. Plaintiffs are further informed, believe, and thereon allege that each of the
24 Defendants herein gave consent to, ratified, adopted, approved, controlled, aided and abetted,
25 and/or otherwise authorized the acts alleged herein to the remaining Defendants.

26 **Jurisdiction and Venue**

27 12. This Court has personal jurisdiction over the Defendants because they have
28 purposefully availed themselves of the privilege of conducting business in California insofar as

1 Shutterfly has its principal place of business in the State and Defendants maintain systematic and
2 continuous business contacts with California.

3 13. Jurisdiction and venue are proper in this Court pursuant to Defendants' Terms of
4 Service and corresponding forum selection clause, which provide that any dispute shall "submit
5 to the exclusive jurisdiction of any State or Federal court located in the County of Santa Clara,
6 California, United States of America."

7 14. The Terms of Service also contain a choice of law provision dictating that
8 California law will apply to all consumers nationwide: "These Terms are governed and construed
9 in accordance with the laws of the State of California, United States of America, without regards
10 to its conflict of law provisions."

11 15. A copy of the Terms of Service is attached as Exhibit 1 and incorporated into this
12 complaint.

13 **General Allegations**

14 16. Plaintiff, on information and belief, alleges the following:

15 17. To millions of parents and students, "Shutterfly" and "Lifetouch" are household
16 names.

17 18. Defendants have described themselves as "the national leader in school portraits."

18 19. Defendants are the nation's largest producer of school photos.

19 20. As explained in their March 1, 2019 Form 10-K SEC filing, Defendants capture
20 images of more than 25,000,000 individuals each year.

21 21. In one form or another, Defendants' photos find their way to the wallets,
22 refrigerators, bookshelves and picture frames of more than 48 million homes across North
23 America each year.

24 22. The school photo industry is worth \$1.6 billion a year, according to IBISWorld, a
25 market research firm based in Los Angeles.

26 23. Defendants control approximately 40% of the market for school photos, but they
27 are facing industry challenges.

28 24. As explained in a May 10, 2019, New York Times article, the industry is wobbling

1 because of the spread of digital cameras and smartphones, high prices, schools' photo fees, and
2 decreasing sales. <https://www.nytimes.com/2019/05/10/style/school-photos-costs.html>.

3 25. There is also increased competition from local companies.

4 26. Defendants began selling Spring portraits under a "Family Approval" model in
5 some markets, including in the Olathe School District and, on information and belief, other
6 communities throughout the nation including California, whereby portraits and/or products are
7 sent home with students, and their parents and guardians are directed to pay for the portraits
8 and/or products or return them.

9 27. Defendants additionally seek to collect for the portraits and/or products by
10 emailing parents and guardians with reminders to pay.

11 28. During the relevant time, Defendants have sold Spring portraits and/or products
12 throughout the country including California under the "Family Approval" model.

13 29. By way of example, Defendants sent unordered portraits and/or products to
14 Plaintiff each Spring during the past three years.

15 30. Each Spring, Plaintiff's children came home from school with Lifetouch portraits
16 and/or products taken by Defendants under the "Family Approval" model described above.

17 31. In or about May 2017, Plaintiff received an email from Defendants stating "Pay
18 for your Spring Portrait Package," and advising that portrait packages should be coming home
19 soon. The email directed Plaintiff to select her favorites and pay at mylifetouch.com. The emails
20 further thanked her if she had already paid and directed her to return any unpurchased portraits to
21 school.

22 32. On or about March 2, 2018, Plaintiff received an email from Defendants stating
23 that "Spring Picture Day is Monday, March 5." Defendants' email gave tips on what her children
24 should wear and "how to prepare for Picture Day."

25 33. In or about March of 2018, Plaintiff received an email from Defendants stating
26 that Spring Portraits would be coming home soon with her children. The email directed Plaintiff
27 to select her favorites and to pay at mylifetouch.com. The email further directed her to return any
28 unpurchased portraits to school.

1 34. The outside of the 2017 envelope containing the portraits and/or products states:
2 “Details inside on how to buy.”

3 35. The back of the 2017 envelopes states: “Send payment to school or pay at
4 mylifetouch.com.”

5 36. The flap of the 2017 envelope states: “Time-sensitive materials.”

6 37. The outside of the 2018 envelope containing the portraits and/or products states:
7 “Details inside on how to buy.”

8 38. The back of the 2018 envelope states: “Send payment to school or pay at
9 mylifetouch.com.”

10 39. The flap of the 2018 envelope states: “Time-sensitive materials.”

11 40. Inside the 2017 envelope were one 8x10” portrait, two 5x7” portraits, four 3x5”
12 portraits, eight 2x3” portraits, and one fun pack containing a bag tag, key tags, a bookmark, and a
13 door hanger with portraits printed on them.

14 41. Similarly, inside the 2018 envelope were one 8x10” portrait, two 5x7” portraits,
15 four 3x5” portraits, eight 2x3” portraits, and one fun pack containing a bag tag, key tags, a
16 bookmark, and a door hanger with portraits printed on them.

17 42. The 2017 envelope contained two forms purporting to provide parents and
18 guardians with a choice as to how to proceed.

19 43. The first form states: “The choice is yours ...” and gives parents and guardians the
20 choice to either (1) purchase portraits and/or products using the form, (2) pay at mylifetouch.com,
21 or (3) “return envelope and any portraits not purchased to school within 7 days.” The form states
22 the entire package costs \$45.00.

23 44. The second form, printed on an envelope, states: “Pay for your Spring Portraits
24 online at mylifetouch.com.”

25 45. Plaintiff purchased the entire packet of spring portraits and products from
26 Lifetouch in Spring 2017 with a check. She did not purchase the spring 2017 portraits online.

27 46. Plaintiff believes she purchased the entire packet of spring portraits and products
28 from Lifetouch in Spring 2018 with cash. She did not purchase the spring 2018 portraits online.

1 47. On information and belief, Plaintiff states that she received similar envelopes from
2 Defendants containing unordered school portraits and/or products in other years as well.

3 48. In all situations alleged above, Plaintiff did not order these portraits and/or
4 products, nor did Defendants ask Plaintiff to pre-order them.

5 49. Defendants' communications, including their envelopes, written materials, and
6 emails do not disclose that California law prohibits the distribution of unordered merchandise
7 and/or that these portraits and/or products are unconditional gifts that do not require payment or
8 return.

9 50. Further, through their communications, including their envelopes, written
10 materials and emails, Defendants willfully misrepresent, misstate and/or improperly suggest that
11 parents and guardians are legally obligated to purchase the portraits and/or products or return
12 them.

13 51. On information and belief, Defendants have distributed the same or similar
14 envelopes containing unordered school portraits and/or products to elementary and middle school
15 students in school districts across the country.

16 52. On information and belief, Defendants have also sent the same or similar emails
17 directing and/or reminding to pay for the unordered portraits and/or products or return them to
18 school to parents and guardians of elementary and middle school students.

19 53. Defendants' "Family Approval" model directly violates California law, as well as
20 the consumer protection laws of each state.

21 54. Not only is this scheme illegal, misleading, and unconscionable, but sending
22 unsolicited goods home with students and emailing their homes unfairly pressures their parents
23 and guardians to pay for Defendants' expensive portraits and/or products or risk disappointing
24 their children and/or face embarrassment in front of teachers and school administrators.

25 55. On information and belief, Defendants contract with hundreds, if not thousands, of
26 school districts nationwide to be their exclusive school portrait for purposes of, among other
27 things, school portraits, yearbooks, class/extracurricular portraits, and staff portraits.

28 56. Defendants are aware that their practice of sending students home with unordered

1 portraits and/or products and seeking payment for them is unlawful but continue the practice to
2 increase their profits.

3 57. Shutterfly stated in a March 1, 2019, SEC filing:

4 In some markets, Lifetouch offers spring portraits under a “Family
5 Approval” model whereby portrait products are distributed by the school to
6 parents for review. Parents are asked to pay for the products they elect to
7 keep (if any) and to return any products they do not wish to purchase to the
8 school. Lifetouch has been and in the future **may be subject to claims
9 from individuals that these products qualify as “gifts” and/or that the
10 program does not comply with legislation pertaining to “unsolicited
11 goods.”** While we do not believe that such legislation is applicable to
12 school portraits, if Lifetouch becomes subject to such claims and is
13 required or elect to curtail the use of the Family Approval model, its
14 business and revenue may be negatively impacted.

15 Shutterfly, Inc., Quarterly Report (Form 10-K), at 29 (March 1, 2019), available at
16 [https://www.sec.gov/ix?doc=/Archives/edgar/data/1125920/000112592019000008/sfly-
17 20181231.htm#i_0_64](https://www.sec.gov/ix?doc=/Archives/edgar/data/1125920/000112592019000008/sfly-20181231.htm#i_0_64) (Emphasis added).

18 58. Plaintiff brings this class action on behalf of herself and all similarly situated
19 individuals to stop Defendants’ illegal use of the “Family Approval” model and recover
20 Defendants’ ill-gotten gains.

21 **Class Action Allegations**

22 59. Plaintiff brings this action individually and as a class action on behalf of an opt-out
23 class (the “Class”) defined as follows:

24 **All individuals who received and paid for unordered school
25 portraits and/or products from Defendants within the past four
26 years.**

27 60. Plaintiffs reserve the right under Rule 3.765(b), California Rules of Court, to
28 amend or modify the class description with greater specificity or further division into a subclasses
or limitations to particular issues.

61. This action is brought, and may properly be maintained, as a class action pursuant
to California Code of Civil Procedure §382 and Civil Code § 1781 (and the analogous provisions
of Federal Rules of Civil Procedure 23(a)(1)-(4) and 23(b).)

62. Defendants, via their unlawful actions, have violated various California consumer

1 protection laws along with California Civil code prohibiting such conduct. There is a well-
 2 defined community of interest in the litigation, and the proposed class is easily ascertainable. As
 3 described below, this action also satisfies the numerosity, commonality, predominance, typicality,
 4 adequacy, and superiority requirements.

5 **Numerosity**

6 63. A class action is the only available method for the fair and efficient adjudication of
 7 this controversy. Although the exact number and identities of Class Members are unknown to
 8 Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is
 9 informed and believes that the Class includes at least 1000 persons. On information and belief,
 10 therefore, Plaintiff alleges that the members of the Class are so numerous that joinder of all
 11 members is impractical, if not impossible. Membership in the Class will be determined upon
 12 analysis of, *inter alia*, telephone systems records maintained by Defendants.

13 **Commonality and Predominance**

14 64. The Plaintiffs and the Class share a community of interest because there are
 15 numerous common issues of fact and law that predominate over any questions and issues solely
 16 affecting individual members. Such common factual and legal issues include, but are not limited
 17 to, the following:

- 18 a. Whether Defendants had a policy or practice of sending Plaintiff and class
 19 members unordered portraits and products and then demanding payment;
- 20 b. Whether Defendants had a policy or practice during the Class Period of not
 21 disclosing/providing notice to the proposed Class Members that these portraits and products
 22 should be considered a "gift";
- 23 c. Whether California law applies to the claims of Plaintiff and class members;
- 24 d. Whether Defendants violated Cal. Civ. Code § 1584.5;
- 25 e. Whether Defendants violated Cal. Civ. Code § 1716;
- 26 f. Whether Defendants violated California's Consumer Legal Remedies Act (Civ.
 27 Code § 1750 et seq.);
- 28 g. Whether Defendants violated the California Unfair Competition Law, § 17200.

Typicality

65. Plaintiff's claims are typical of the claims of the proposed Class. Plaintiff and all Class Members are based on the same legal theories and arise out of the same common course of conduct and unlawful policies or practices of Defendant, resulting in the same injury to Plaintiffs and Class Members.

Adequacy of Representation

66. Plaintiff will fairly and adequately represent the Class. Plaintiff has the same interests in the litigation of this case as the Class Members. Plaintiff is committed to vigorous prosecution of this case and has retained competent counsel who are experienced in class actions of this nature. Plaintiff is not subject to any individual defenses different from those conceivably applicable to the Class as a whole. Plaintiff and her counsel are not aware of any interest adverse to those of the other proposed Class Members.

Superiority of Class Action

67. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all Class Members is impractical. The nature of this action and the format of laws available to Plaintiff and Class Members identified herein make the class action format a particularly efficient and appropriate procedure to redress the wrongs alleged herein. If each Class Member were required to file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual class member with their vastly superior financial and legal resources. Requiring each class member to pursue an individual remedy would also discourage the assertion of lawful claims by Class Members who would be disinclined to file an action against Defendant.

68. Even if every Class Member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous cases would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same factual issues leading to

1 establishment of inconsistent rulings and standards. The prosecution of individual actions may
 2 create a risk of adjudications that as a practical matter may be dispositive of the Class Members
 3 interest not parties to those adjudications or that may impede or impair the ability of those non-
 4 party Class Members to protect their own interest. Further, it will allow the illegal actions (that
 5 are difficult to discovery due to their convert nature) and very real harm suffered by numerous
 6 putative Class Members to continue unabated due to most individual's inability to pursue and
 7 enforce such individual claims because of the limited statutory penalty. By contrast, the conduct
 8 of this action as a class action, with respect to some or all of the issues presented herein, presents
 9 fewer management difficulties, conserves the resources of the parties and the court system, and
 10 protects the rights of each Class Member. Plaintiff anticipates no management difficulties in this
 11 litigation.

12 69. Further, the Defendant has also acted, or have refused to act, in respects generally
 13 applicable to the Class, thereby making appropriate final and injunctive relief, or corresponding
 14 declaratory relief, with regard to Class Members as a whole, as requested herein. Likewise,
 15 Defendant's conduct, as described herein, is unlawful, ongoing, and will continue unless
 16 restrained and enjoined by this Court.

17 **FIRST CAUSE OF ACTION**

18 **Solicitation of Payment for Unordered Goods**

19 **(Civ. Code § 1716)**

20 **(By Plaintiff against All Defendants)**

21 70. Plaintiff incorporates by reference in this cause of action each allegation of all of
 22 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
 23 Does 1-10, and each of them, as follows:

24 71. California Civil Code § 1716 states "It is unlawful for a person to solicit payment
 25 of money by another by means of a written statement or invoice, or any writing that reasonably
 26 could be considered a bill, invoice, or statement of account due, but is in fact a solicitation for an
 27 order, unless the solicitation conforms to subdivisions (b) to (f), inclusive."

28 72. Subsection (b) of § 1716 requires a statement that the solicitation is not a bill as

1 follows:

- 2 • “THIS IS NOT A BILL. THIS IS A SOLICITATION. YOU ARE UNDER NO
- 3 OBLIGATION TO PAY THE AMOUNT STATED ABOVE UNLESS YOU
- 4 ACCEPT THIS OFFER.”
- 5 • “This is a solicitation for the order of goods or services, or both, and not a bill,
- 6 invoice, or statement of account due. You are under no obligation to make any
- 7 payments on account of this offer unless you accept this offer.”

8 73. Defendants’ communications constituted solicitations and these solicitations did
9 not contain the required language or any conspicuous language indicating that these were not
10 bills.

11 74. Defendants’ communications would cause a reasonable recipient to believe that
12 payment was legally required.

13 75. As a direct result of this violation, Plaintiff and the Class were harmed because
14 they paid for unsolicited photos for which they were not obligated to pay.

15 76. Pursuant to Section 1716(g) “Any person damaged by noncompliance with this
16 section, in addition to other remedies, is entitled to damages in an amount equal to three times the
17 sum solicited.”

18 **Second Cause of Action**

19 **Violation of California Civil Code § 1584.5**

20 **(By Plaintiff against all Defendants)**

21 77. Plaintiff incorporates by reference in this cause of action each allegation of all of
22 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
23 Does 1-10, and each of them, as follows:

24 78. California Civil Code § 1584.5 prohibits sellers from offering goods for sale where
25 the offer includes a voluntary and unsolicited sending or providing of goods that were not ordered
26 or requested.

27 79. Defendants are corporations under § 1584.5.

28 80. The school portraits and/or products delivered by Defendants are “goods” under §

1 1584.5.

2 81. During all times relevant, Defendants, or their agents or employees, sent home
3 school portraits and/or products to Plaintiff and the Class that they did not affirmatively order or
4 request.

5 82. Plaintiff and the Class's receipt of these portraits was an unconditional gift to
6 Plaintiff and the Class, and Plaintiff and the Class may use or dispose of the portraits in any
7 manner they see fit without any obligation to Defendants.

8 83. Defendants have continued to send bill statements or otherwise request payment
9 for the portraits from Plaintiff and the Class while concealing that Plaintiff and the Class were not
10 obligated to return or pay for the goods.

11 84. By seeking payment for unordered goods or return them, Defendants were
12 attempting to collect for unordered property, which is a violation of Cal. Civil Code §1584.5.

13 85. As a result of Defendants' violations, Plaintiff and the Class members are entitled
14 to injunctive relief, attorneys' fees and costs.

15 **Third Cause of Action**

16 **Violation of the California Consumers Legal Remedies Act**

17 **(Civ. Code § 1750 et seq.)**

18 **(By Plaintiff against all Defendants)**

19 86. Plaintiff incorporates by reference in this cause of action each allegation of all of
20 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
21 Does 1-10, and each of them, as follows:

22 87. The Consumer Legal Remedies Act ("CLRA"), California Civil Code § 1750, et
23 seq., was designed to protect consumers from unfair and deceptive business practices. To this
24 end, the Consumer Legal Remedies Act sets forth a list of unfair and deceptive acts and practices
25 that are specifically prohibited in any transaction intended to result in the sale or lease of goods or
26 services to a consumer.

27 88. Defendants are "persons" within the meaning of Civil Code §§ 1761(c) and 1770
28 and sell "services" within the meaning of Civil Code §§ 1761(b) and 1770.

1 89. Plaintiff is a consumer within the meaning of Civil Code § 1761(d) and has
2 engaged in a transaction within the meaning of Civil Code §§ 1761(e) and 1770.

3 90. Defendants provide goods and services within the meaning of Civil Code §§
4 1761(b) and 1770.

5 91. California Civil Code §1770(a) provides that “the following unfair methods of
6 competition and unfair or deceptive acts or practices undertaken by any person in a transaction
7 intended to result or which results in the sale or lease of goods or services to any consumer are
8 unlawful” including but not limited to:

9 a. Representing that a transaction confers or involves rights, remedies, or obligations
10 that it does not have or involve, or that are prohibited by law.

11 b. Inserting an unconscionable provision in the contract.

12 92. By reason of the acts and practices alleged in this Complaint, Defendants have
13 engaged in unfair methods of competition and unfair or deceptive acts or practices in a transaction
14 intended to result or which results in the sale of goods or services to any consumer.

15 93. Defendants engaged in these unfair and/or deceptive acts and practices with the
16 intent that they resulted and which did result in the purchase of the photographs and other
17 products at issue in this Complaint.

18 94. Plaintiff reasonably believed, relied, and/or depended on the unlawful, material,
19 false and/or misleading information provided by Defendants that Plaintiff was required to pay for
20 the photographs provided and Plaintiff specifically chose to pay for the photographs based on
21 Defendants’ unlawful, unfair and deceptive conduct.

22 95. As a result of the unlawful, unfair and deceptive acts and practices of Defendants,
23 Plaintiff paid for products for which she had not ordered and was not required to pay. Plaintiff,
24 therefore, suffered monetary harm and is entitled to injunctive and equitable relief, as well as
25 attorneys’ fees and costs of suit.

26 96. At this time, Plaintiff does not currently seek monetary damages as part of their
27 CLRA claim. Following the filing of this Complaint, Plaintiff will mail Defendants a CLRA
28 demand letter in the manner required by statute. If the Defendants do not agree and perform the

1 relief requested in the demand letter within 30 days of its receipt, Plaintiff reserves the right to
 2 amend this Complaint to also then assert a claim for relief for money damages under the CLRA.

3 **Fourth Cause of Action**

4 **Violation of the California Unfair Competition Law**

5 **(Bus. & Prof. Code, § 17200 et seq.)**

6 **(By Plaintiff Against all Defendants)**

7 97. Plaintiff incorporates by reference in this cause of action each allegation of all of
 8 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
 9 Does 1-10, and each of them, as follows:

10 98. Plaintiff brings this cause of action on behalf of herself and the Class as well as on
 11 behalf of the general public, seeking equitable and statutory relief to stop the misconduct of
 12 Defendants, as complained of herein, and to compel disgorgement of all profits obtained by
 13 Defendants through the unfair, unlawful, and/or fraudulent business practices described herein.

14 99. The conduct of Defendants, as alleged herein, constitutes an unlawful business
 15 practice as set forth in Business and Professions Code §§ 17200, *et seq.*

16 100. Specifically, Defendants conducted business activities while failing to comply
 17 with California consumer protection laws as described in this Complaint. Defendants, and each
 18 of them, have intentionally and improperly sent unsolicited goods and sought payment for those
 19 unsolicited goods from Plaintiff and Class members. Section 17200 of the Business and
 20 Professions Code prohibits unfair competition by prohibiting unlawful, unfair, or fraudulent
 21 business practices or acts. Defendants' failure to adopt policies in accordance and/or adherence
 22 with these laws, all of which are binding upon and burdensome to Defendants' competitors,
 23 engenders an unfair competitive advantage for Defendants, thereby constituting an unfair
 24 business practice, as set forth in California Business and Professions Code §§ 17200, *et seq.*

25 101. Defendants' conduct as alleged herein has damaged Plaintiff and the Class
 26 Members by intentionally seeking payment for unsolicited and unordered goods. Such conduct
 27 was substantially injurious to Plaintiff and the Class.

28 102. Under the circumstances alleged herein, it would be inequitable and result in a

1 miscarriage of justice for Defendants to continue to retain the property of Plaintiff and the Class
 2 Members, entitling Plaintiff and the Class Members to restitution of the unfair benefits obtained
 3 and disgorgement of Defendants' ill-gotten gains.

4 103. As a result of Defendants' unlawful and unfair business practices, Plaintiff and
 5 Class Members are entitled to, and hereby do, seek restitution and disgorgement and other
 6 appropriate injunctive and other relief available under California Business and Professions Code
 7 §§ 17200, *et seq.*

8 **Fifth Cause of Action**

9 **Unjust Enrichment**

10 **(By Plaintiff against all Defendants)**

11 104. Plaintiff incorporates the previous allegations by reference in this cause of action
 12 each allegation of all of the foregoing paragraphs as if fully restated herein, and further allege
 13 against Defendants and Does 1-10, and each of them, as follows:

14 105. Defendants have received money from the Plaintiff and class members in
 15 connection with Defendants' conduct in violation of California law. Defendants would be
 16 unjustly enriched if they were permitted to retain those funds, and Defendants should be ordered
 17 to restore said funds to Plaintiff and the class members.

18 106. Plaintiff alleges this unjust enrichment claim in the alternative to relief provided
 19 under any legal claim alleged herein.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiff, on behalf of herself and the Proposed Class and prays for
 22 judgment and the following specific relief against Defendants, jointly and separately as follows:

23 A. That the Court determine and order that this action may be maintained and
 24 certified as a class action under California Code of Civil Procedure § 382 and Civil Code § 1781;

25 B. That the Court order Plaintiff appointed as representative of the Class and appoint
 26 counsel for Plaintiff as class counsel;

27 C. For monetary damages in the amount of three times the sum solicited pursuant to
 28 Civil Code § 1716;

1 D. For injunctive relief pursuant to Civil Code 1584.5;

2 E. That Plaintiff, the Class Members, and represented parties be awarded reasonable
3 attorneys' fees and costs pursuant to Civil Code §§ 1584.5, 1780(e) and/or other applicable law;
4 and,

5 F. That Plaintiffs and the Class Members be awarded prejudgment interest on all
6 damages and other relief awarded;

7 G. That Defendants are found to have violated Business & Professions Code
8 §§ 17200, *et seq.*, and be enjoined to cease and desist from unlawful activities in violation of
9 Business & Professions Code §§ 17200, *et seq.*

10 H. That Defendants be ordered and enjoined to pay restitution to Plaintiff and Class
11 Members due to Defendants' unlawful activities, pursuant to Business & Professions Code
12 §§ 17200, *et seq.*;

13 I. That Defendants be ordered to pay restitution; and

14 J. That Plaintiff, the Class Members, and represented parties receive an award of
15 such other and further relief as this Court may deem appropriate.

16
17 Dated: February 14, 2020 DA VEGA | FISHER | MECHTENBERG LLP

18
19 By: 

20 Ted Mechtenberg, SBN 219602
21 Attorneys for Plaintiff
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27
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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all others similarly situated, hereby demand a trial by jury for all issues so triable.

Dated: February 14, 2020 DA VEGA | FISHER | MECHTENBERG LLP

By: 

Ted Mechtenberg, SBN 219602

Attorneys for Plaintiff

EXHIBIT 1



HOME

ORDER PICTURES

PHOTOGRAPHY SERVICES

WHO WE ARE

Terms of Service

Terms of Service

Last updated: July 2018

On April 2, 2018, Lifetouch Inc. joined the Shutterfly family of brands. The following Terms of Service were updated to align the combined companies' policies and practices where applicable.

Welcome to Lifetouch and our family of brands. Please read these Terms of Service ("Terms") carefully. They contain the legal terms and conditions that govern your use of and access to our websites, mobile sites, and mobile applications that link to these Terms (collectively, our "Sites and Apps"), as well as our provision of products and services to our customers. If you make a purchase, order products, schedule an appointment or otherwise transact with us through our Sites and Apps, such transactions may also be governed by policies, terms and conditions specific to the product or service that are communicated to you when offering and/or before confirming the transaction, for example terms made part of an e-commerce checkout process or limitations stated in promotional materials. Please review these additional terms before making any transaction with us.

Note to Lifetouch school accounts: Separate terms of service, not these Terms, apply to products and services (including websites, applications and online services) that are designed for the use and benefit of the schools and school districts Lifetouch provides service to for their administrative and educational purposes and which are used by or at the direction of teachers or other school or district employees (a "School Service"). Please refer to the Terms of Service associated with those School Services or contact us through your Lifetouch school account representative for further information.

By visiting any of our Sites and Apps, you are signifying your assent to these Terms and our Privacy Policy, which is incorporated herein by reference. Any products ordered or services used through any of our Sites and Apps are also governed by these Terms. We may revise these Terms from time to time by posting a revised version. YOUR CONTINUED USE OF ANY OF THE SITES AND APPS AFTER WE POST ANY CHANGES WILL CONSTITUTE YOUR ACCEPTANCE OF SUCH CHANGES. IN ADDITION, BY ORDERING OUR PRODUCTS OR USING OUR SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ AND REVIEWED THESE TERMS IN THEIR ENTIRETY, YOU AGREE TO THESE TERMS AND THE PRIVACY POLICY AND THESE TERMS CONSTITUTE BINDING AND ENFORCEABLE OBLIGATIONS ON YOU.

NOTE: THIS TERMS OF SERVICE CONTAINS AN ARBITRATION AND CLASS ACTION WAIVER PROVISION IN THE "ARBITRATION" SECTION BELOW THAT AFFECTS YOUR RIGHTS UNDER THIS TERMS OF SERVICE AND WITH RESPECT TO ANY DISPUTE BETWEEN YOU AND US OR OUR AFFILIATES

1. YOUR USE OF OUR SITES AND APPS

You may access and use our Sites and Apps solely for your personal, noncommercial use. Except as expressly authorized hereunder, our Sites and Apps may not be reproduced, duplicated, copied, sold, resold, visited, reverse-engineered or otherwise exploited for any commercial purpose without our prior written authorization. We reserve the right to alter or discontinue our Sites and Apps, in whole or in part, at any time in our sole discretion.

Subject to and conditioned upon your compliance with these Terms, we grant to you a non-exclusive, non-transferable, limited right and license, without right of sublicense, to access and use our Sites and Apps, including any images, text, graphics, sounds, data, links and other materials incorporated into our Sites and Apps (other than your User Submitted Materials as defined below), solely as made available by us and solely for your own personal purposes. Except as expressly authorized by these Terms, you may not use, reproduce, distribute, modify, transmit or publicly display any portion of our Sites and Apps or create derivative works of any portion our Sites and Apps without our written consent. While using any of our Sites and Apps, you agree not to:

- Access or attempt to access images that are not your images or accounts that you do not own, unless given permission by the image subject (or, in the case of a minor, the image subject's parent or legal guardian);
- Upload or download photographs of people who have not given permission (or, in the case of a minor, whose parent or legal guardian has not given permission) for their photographs to be uploaded or downloaded.
- Defame, abuse, harass, stalk, threaten or otherwise violate the rights of others, including, without limitation, others' privacy rights or rights of publicity;
- Impersonate any person or entity or use any fraudulent, misleading or inaccurate email address or other contact information;
- Restrict or inhibit any other user from using any of our Sites and Apps, including, without limitation, by means of "hacking" or defacing any portion our Sites and Apps;
- Violate any applicable laws or regulations;
- Upload to, transmit through, or display on any of our Sites and Apps (a) any material that is unlawful, fraudulent, threatening, abusive, libelous, defamatory, obscene or otherwise objectionable, or infringes our or any third party's intellectual property or other rights; (b) any confidential, proprietary or trade secret information of any third party; or (c) any advertisements, solicitations, chain letters, pyramid schemes, investment opportunities or other unsolicited commercial communication (except as otherwise expressly permitted by us);
- Engage in spamming;
- Transmit any software or other materials that contain any viruses, worms, trojan horses, defects, or other destructive items;
- Modify, adapt, translate, distribute, reverse engineer, decompile or disassemble any portion of our Sites and Apps; and

- Remove any copyright, trademark or other proprietary rights notices contained in or displayed on any portion of our Sites and Apps
- Display adult nudity or inappropriate child nudity.
- Post objectionable material, such as material containing hate or malicious content or offers for adult services, or material inciting or advocating terrorism or violence

If you fail to comply with the above rules, such failure will constitute a violation of these Terms, and in addition to any other rights or remedies we may have, we may immediately terminate your access to and use of our Sites and Apps.

Some features of our Sites and Apps may enable you to send and receive transmissions. You acknowledge that we have no responsibility or liability for any transmissions, and/or any content included in such transmissions, sent or received by you. We reserve the right, in our sole discretion and at any time, to set limits on the number and size of any transmissions sent by or received through our Sites and Apps and/or the amount of storage space available for transmissions or for any feature made available through our website.

1. YOUR MEMBER ACCOUNT

You may create a member account with any of our Sites and Apps by registering your name, providing certain information about yourself, and creating a password. You agree that you will provide complete, current and accurate information about yourself as requested, and that you will keep that information up to date. You are responsible for safeguarding the confidentiality of your username and password that you use to access your member account on our Sites and Apps. You agree not to disclose your username or password to any third party. YOU AGREE THAT YOU ARE SOLELY AND FULLY RESPONSIBLE FOR ANY ACTIVITIES OR ACTIONS TAKEN UNDER YOUR ACCOUNT, WHETHER OR NOT YOU HAVE AUTHORIZED SUCH ACTIVITIES OR ACTIONS. You will immediately notify us of any unauthorized use of your account on any of our Sites and Apps.

In order to create a member account with any of our Sites and Apps, you must be at least 18 years of age. You represent to us that you are at least 18 years old. If you are not, please do not set up an account with any of our Sites and Apps.

2. MAKING PURCHASES

If you wish to purchase any products or services through any of our Sites and Apps, we will ask you to supply certain information applicable to your purchase, including, without limitation, payment and other information. Any such information will be treated as described in our Privacy Policy. All information that you provide to us or our third party payment processor must be accurate, current and complete. YOU REPRESENT AND WARRANT THAT YOU HAVE THE LEGAL RIGHT TO USE ANY CREDIT CARD(S) OR OTHER PAYMENT MEANS USED TO INITIATE ANY TRANSACTION. You agree to pay all charges incurred by you or any users of your account and credit card (or other applicable payment mechanism) at the prices in effect when such charges are incurred. You will also be responsible for paying any applicable taxes relating to your purchases. Verification of information applicable to a purchase may be required prior to our acceptance of any order.

Descriptions, images, references, features, content, specifications, products, price and availability of any products or services are subject to change without notice, and our current prices can be found on our Sites and Apps. We make reasonable efforts to accurately display the attributes of our products, including the applicable colors; however, the actual color you see will depend on your computer system, and we cannot guarantee that your computer will accurately display such colors. The inclusion of any products or services on our Sites and Apps at a particular time does not imply or warrant that these products or services will be available at any time.

It is your responsibility to ascertain and obey all applicable local, state, federal and international laws (including minimum age requirements) in regard to the possession, use and sale of any item purchased through our Sites and Apps. By placing an order, you represent that the products ordered will be used only in a lawful manner. We reserve the right, with or without prior notice, to limit the available quantity of or discontinue any product or service; to honor, or impose conditions on the honoring of, any coupon, coupon code, promotional code or other similar promotions; to bar any user from making any or all purchase(s); and/or to refuse to provide any user with any product or service.

Title and risk of loss for any purchases pass to you upon our delivery to our carrier. We reserve the right to ship partial orders (at no additional cost to you), and the portion of any order that is partially shipped may be charged at the time of shipment.

3. PHOTO ARCHIVING

Our goal is to make the photos Lifetouch creates available to our customers for years to come. In partnership with our parent company Shutterfly Inc., Lifetouch offers photo archiving for its customers in many of its photography programs at no additional cost. When you purchase photos from Lifetouch, we may securely retain a digital copy of one or more of your source photos for you to claim and archive in your Shutterfly account, if you wish to do so. By placing an order for Lifetouch photos and/or by registering as a customer on one or more of our websites, you are giving us your permission to retain any and all of your photos for this purpose as described in these terms of service. You may opt out at any time in accordance with the photo deletion process outlined below. If you do elect to claim and archive a Lifetouch photo in your photo library at Shutterfly.com, the terms and policies applicable to Shutterfly.com, not these Terms, define that service and your options, which may be different from those outlined here.

Please note that Shutterfly archiving services are available only to customers who purchase Lifetouch photos, whether captured within schools, churches, organizations, portrait studios or other professional photography outlets we operate. Unless purchased by a parent (or by someone with whom the parent has shared the photo), we retain school photos only as long as necessary to satisfy our obligations to the schools we serve.

By placing an order for Lifetouch photos and/or by registering as a customer on one or more of our websites, you also agree that Lifetouch may link to your account photos we capture in the future of a person whose photo you have purchased in the past, whether you purchase such future photos or not. For example, if you purchase your child's first grade school photo, we will store that photo and, if we return to photograph your child the following year, we may automatically associate that photo with your Lifetouch account. If you have opted into Shutterfly archiving, we will make such future images available in your Shutterfly account.

You also agree that we may use your contact information to notify you when such future photos are available, and that we may present to you, via email or other channels of communication or within your Lifetouch or Shutterfly account, personalized photographic products that feature your photos from time to time for your consideration. For example, we may show you how your photos would look on a specialty product such as a canvas wall hanging or holiday card. You may opt out of receiving such communications and change your contact preferences within your account at any time.

Your options. If you do not want us to retain your photos for you to claim on your Shutterfly account, you may contact us at (800) 736-4753 to opt out. Before we can fulfill your request, we may require certain information from you. Once we have validated your request, we will remove the affected photo(s) from our image repository. Please be aware, however, that if you opt out, Lifetouch may still retain your photo for other limited purposes – for example, if we are contractually required to provide photographic products and services (such as yearbook photos or the yearbook itself) to a school or other organization you are affiliated with. We reserve the right to

deny a request to remove all copies of your photos from our systems to the extent that doing so would be unreasonably burdensome or would cause us to violate a law, court order or a contractual commitment to another customer or to the organization that engaged us to provide photography that included your photo. Also, please be aware that, if you shared your photo with other purchasers, your photo deletion request will not affect any photos retained in others' photo libraries or those purchasers' archiving preferences.

4. CONTESTS AND SWEEPSTAKES

In addition to the terms and conditions of these Terms, any contests, sweepstakes, surveys, games or similar promotions (collectively, "Promotions") made available through our Sites and Apps may be governed by specific rules that are separate from this Agreement. By participating in any such Promotion, you will become subject to those rules, which may vary from these Terms. We urge you to review any specific rules applicable to a particular Promotion, which will be linked from such Promotion, and to review our Privacy Policy which, in addition to these Terms, governs any information you submit in connection with such Promotion. To the extent that the terms and conditions of such rules conflict with these Terms, the terms and conditions of such rules will control. Notwithstanding the foregoing, any dispute, claim or controversy arising out of or relating in any way to the Lifetouch service and these Terms of Service will be subject to binding arbitration pursuant to the Arbitration Agreement contained in Paragraph 16 below.

5. THIRD-PARTY SITES, SOFTWARE AND SERVICES

Our Sites and Apps may link to sites, software or services owned or operated by unaffiliated third parties ("Third Party Properties"). We have not reviewed all of the Third Party Properties to which you may be directed and we have no control over such Third Party Properties. We have no control over and are not responsible for (a) the content and operation of such Third Party Properties, or (b) the privacy or other practices of such Third Party Properties. The fact that our Sites and Apps link you to such Third Party Properties does not indicate any approval or endorsement of any such Third Party Properties. We direct you to such Third Party Properties only as a convenience. You are responsible for the costs associated with such Third Party Properties, including any applicable license fees and service charges. Accordingly, we strongly encourage you to become familiar with the terms of use and practices of any such Third Party Properties.

Other sites may provide links to our Sites and Apps with or without our authorization. We do not endorse such sites, and are not and will not be responsible or liable for any links from those sites to our Sites and Apps, any content, advertising, products or other materials available on or through such other sites, or any loss or damages incurred in connection therewith.

YOU AGREE THAT YOUR USE OF THIRD PARTY SITES, SOFTWARE AND SERVICES INCLUDING, WITHOUT LIMITATION, YOUR USE OF ANY CONTENT, INFORMATION, DATA, ADVERTISING, PRODUCTS, OR OTHER MATERIALS ON OR AVAILABLE THROUGH SUCH SITES, SOFTWARE AND SERVICES, IS AT YOUR OWN RISK AND IS SUBJECT TO THE TERMS AND CONDITIONS OF USE APPLICABLE TO SUCH SITES, SOFTWARE AND SERVICES.

6. MATERIALS SUBMITTED BY CUSTOMER

A Site or App may include interactive features that allow you to upload, submit, share or transmit (collectively "post") to third parties your photographs, digital files, personal information, comments or other content (collectively, "User Submitted Materials"). User Submitted Materials are subject to the following terms and conditions:

- You will retain ownership of such User Submitted Materials, and you grant us and our designees a worldwide, non-exclusive, transferable, royalty-free, perpetual irrevocable right and license, with right of sublicense (through multiple tiers), to use, reproduce, distribute (through multiple tiers), create derivative

works of and publicly display such User Submitted Materials solely in connection with the production or provision of any product or service you request or to show you how your User Submitted Materials would appear in our products or services. For example, when you place an order for a product, we will prepare, manipulate (if necessary), and transmit the User Submitted Materials for production, packaging and shipment. Similarly, if you want to share a photo book with your friends and family, we will accommodate your request by making your photographs available to your friends and family to download and/or to use and create projects of their own, and to purchase products with those photographs.

- Please note that, while you retain ownership of your User Submitted Materials, any template or layout in which you arrange or organize such User Submitted Materials through tools and features made available through any of our Sites and Apps are not proprietary to you, and the rights to such template or layout will remain with us.
- You represent and warrant that you own or otherwise possess all necessary rights with respect to the User Submitted Materials, and that the User Submitted Materials do not and will not infringe, misappropriate, use or disclose without authorization or otherwise violate any copyright, trade secret right or other intellectual property or other property right of any third party, and that the User Submitted Materials are not unlawful, fraudulent, threatening, abusive, libelous, defamatory, obscene or otherwise objectionable.
- You consent to the use of your likeness, and you have obtained the written consent, release, and/or permission of every identifiable individual who appears in User Submitted Materials to use such individual's likeness, for purposes of using and otherwise exploiting the User Submitted Materials in the manner contemplated by these Terms, or, if any such identifiable individual is under the age of eighteen (18), you have obtained such written consent, release and/or permission from such individual's parent or guardian (and you agree to provide to us a copy of any such consents, releases and/or permissions upon our request). If you do submit a submission that contains the likeness of an identifiable individual under the age of eighteen (18), we strongly encourage you not to include any identifying information (such as the individual's name or address) with such User Submitted Materials.
- You agree that we may (but are not obligated to) filter any User Submitted Materials (including, without limitation, deleting or replacing expletives or other harmful or offensive language), refuse to use any User Submitted Materials (including, without limitation, suspending processing and shipping of any order relating to any User Submitted Materials) and/or disclose any User Submitted Materials and the circumstances surrounding the use thereof, to any third party in order to provide the applicable products or services, to enforce these Terms or to comply with legal obligations or governmental requests.
- You agree to indemnify and hold us, our directors, officers, shareholders, employees, contractors, agents, representatives, affiliates, and third party users harmless from and against any and all claims, causes of action, liabilities, damages, losses, expenses and costs (including, without limitation, attorneys' fees) that arise directly or indirectly out of or from: (i) your violation of these Terms, any other agreement or terms of use with us, any representation or warranty contained herein or therein or any applicable law; (ii) your User Submitted Materials; (iii) your activities in connection with obtaining any products or services from us, or (iv) any activity related to access to or use of your account by you or any other person.
- User Submitted Materials that violate these Terms may be removed from our Sites and Apps; provided, however, that we have no obligation to remove User Submitted Materials in response to user reports or requests. We are not responsible for, and will have no liability for, the removal, non-removal or loss of any User Submitted Materials from our Sites and Apps. We recommend you keep back-up copies of your User Submitted Materials on your hard drive or other personal system.

7. COPYRIGHT ISSUES

While we are not obligated to review User Submitted Materials for copyright infringement, we are committed to protecting copyrights and expect users of our Sites and Apps to do the same. The Digital Millennium Copyright Act of 1998 (the "DMCA") provides recourse for copyright owners who believe that material appearing on the Internet infringes their rights under U.S. copyright law. If you believe in good faith that any material used or displayed on or through our Sites and Apps infringes your copyright, you (or your agent) may send us a notice requesting that the material be removed, or access to it blocked. The notice must include the following information: (a) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (b) identification of the copyrighted work claimed to have been infringed (or if multiple copyrighted works are covered by a single notification, a representative list of such works); (c) identification of the material that is claimed to be infringing or the subject of infringing activity, and information reasonably sufficient to allow us to locate the material on our Sites and Apps; (d) the name, address, telephone number and email address (if available) of the complaining party; (e) a statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law; and (f) a statement that the information in the notification is accurate and, under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. If you believe in good faith that a notice of copyright infringement has been wrongly filed against you, the DMCA permits you to send us a counter-notice. Notices and counter-notices must meet the then-current statutory requirements imposed by the DMCA; see <http://www.copyright.gov> for details. DMCA notices and counter-notices regarding our Sites and Apps should be sent to:

Lifetouch Inc.

Law Department Attention: Copyrights
11000 Viking Drive
Eden Prairie, MN 55344
Email: copyright@lifetouch.com

We will have the right, at any time and in our sole discretion, to block links to our Sites and Apps through technological or other means without prior notice.

8. DISCLAIMER OF WARRANTIES

EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED IN THESE TERMS, OUR PRODUCTS AND SERVICES, INCLUDING ALL MATERIALS INCORPORATED THEREIN, ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, WE AND OUR DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES, CONTRACTORS, AGENTS, REPRESENTATIVES AND AFFILIATES DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, ACCURACY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. NOTE: CERTAIN APPLICABLE LAW MAY NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. NO STATEMENT OF OURS OR ANY OF OUR DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES, CONTRACTORS, AGENTS, REPRESENTATIVES AND AFFILIATES SHALL CREATE ANY WARRANTY OTHER THAN THOSE EXPRESSLY CONTAINED IN THESE TERMS.

9. LIMITATION OF LIABILITY

TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, NEITHER WE NOR ANY OF OUR DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES, CONTRACTORS, AGENTS, REPRESENTATIVES, OR AFFILIATES (THE

"LIFETOUGH PARTIES") SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, PROFITS, USE OR DATA), WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER LEGAL THEORY, EVEN IF THE LIFETOUGH PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR RELATING IN ANY WAY TO OUR PROVISION OF (OR FAILURE TO PROVIDE) PRODUCTS OR SERVICES, OR FROM UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR SUBMISSIONS OR DATA, EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED ITS ESSENTIAL PURPOSE. YOU SPECIFICALLY ACKNOWLEDGE THAT THE LIFETOUGH PARTIES ARE NOT LIABLE FOR ANY DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF OTHER USERS OR THIRD PARTIES AND THAT THE RISK OF INJURY FROM THE FOREGOING RESTS ENTIRELY WITH YOU. FURTHERMORE, THE LIFETOUGH PARTIES WILL HAVE NO LIABILITY TO YOU OR TO ANY THIRD PARTY FOR ANY THIRD-PARTY CONTENT UPLOADED. YOUR SOLE AND EXCLUSIVE REMEDY FOR DISSATISFACTION WITH PRODUCTS IS TO OBTAIN A REFUND, AND YOUR SOLE AND EXCLUSIVE REMEDY FOR DISSATISFACTION WITH SERVICES IS TO STOP USING THE SERVICES. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, THE MAXIMUM LIABILITY OF THE LIFETOUGH PARTIES ARISING OUT OF OR RELATING IN ANY WAY TO OUR PROVISION OF (OR FAILURE TO PROVIDE) PRODUCTS OR SERVICES SHALL BE THE ACTUAL PRICE PAID THEREFORE BY YOU. NOTE: CERTAIN JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL, CONSEQUENTIAL OR CERTAIN OTHER TYPES OF DAMAGES, SO SOME OF THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU.

10. POLICY FOR IDEA SUBMISSION

Many of our customers are interested in submitting ideas and suggestions for products and services to be used at our Sites and Apps, either independently of, or in conjunction with, our internally developed concepts. We appreciate our customers' interest in improving our Sites and Apps; however, please note that any such ideas or suggestions that you submit will be owned by us, and you hereby irrevocably assign any intellectual property rights in such ideas and suggestions to us. If you intend to retain any intellectual property rights in your ideas and suggestions (patent, trade secrets, copyright, trademark, etc.), please do not submit them to us without our prior written approval.

You can inquire regarding such approval by sending a letter to Lifetouch Inc., Attn: Idea Submission, Lifetouch Inc., 11000 Viking Drive, Eden Prairie, MN 55344. If we are interested in pursuing any idea or suggestion of yours, we will contact you. Please note that an additional legal agreement may be required by us in order to evaluate your idea or suggestion.

11. NOTICE FOR CALIFORNIA USERS

This notice is for our California users: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted by mail at 1625 North Market Blvd., Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

12. INTELLECTUAL PROPERTY NOTICES

Except as specifically authorized through the sale of a product or service, or on a written release signed by us, images and information from this site may not be reproduced in any way. All images created by Lifetouch Inc. and its subsidiaries are the property of Lifetouch Inc. and its subsidiaries, our licensing partners, or are used with permission.

Our Sites and Apps are ©Lifetouch Inc. All rights reserved.

All trademarks and service marks on any of our Sites and Apps not owned by us are the property of their respective owners. The trade names, trademarks and service marks owned by us, whether registered or unregistered, may not be used in connection with any product or service that is not ours, in any manner that is likely to cause confusion. Nothing contained on any of our Sites and Apps should be construed as granting, by implication, estoppel or otherwise, any license or right to use any of our trade names, trademarks or service marks without our express prior written consent.

13. JURISDICTIONAL ISSUES

Our Sites and Apps are controlled and operated from the United States. Our Sites and Apps are not subject to the laws or jurisdiction of any state, country or territory other than that of the United States. We does not represent or warrant that any of our Sites and Apps, products, and/or services or any part thereof is appropriate or available for use in any particular jurisdiction. Those who choose to access our Sites and Apps do so on their own initiative and at their own risk, and are responsible for complying with all applicable laws, rules and regulations. We may limit the availability of our Sites and Apps, in whole or in part, to any person, geographic area or jurisdiction we choose, at any time and in our sole discretion.

14. MISCELLANEOUS

These Terms are governed by and construed in accordance with the laws of the State of California, United States of America, without regards to its conflict of law provisions. Subject to and without waiving or limiting the mandatory Arbitration Agreement set forth in paragraph 16, to the extent you or Lifetouch are before a court (for instance, to enforce an arbitrator's award), you agree to submit to the exclusive jurisdiction of any State or Federal court located in the County of Santa Clara, California, United States of America, and waive any jurisdictional, venue or inconvenient forum objections to such courts. If any provision of these Terms, or the application thereof to any person, place or circumstance, is invalid, void or otherwise unenforceable, such provision will be enforced to the maximum extent possible, or, if incapable of such enforcement, will be deemed to be deleted from these Terms, and the remainder of these Terms and such provisions as applied to other persons, places and circumstances will remain in full force and effect. No waiver by either party of any breach or default hereunder will be deemed to be a waiver of any preceding or subsequent breach or default, nor will any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy. This is the entire agreement between us relating to the subject matter herein and supersedes any and all prior or contemporaneous written or oral agreements between us with respect to such subject matter. These Terms are not assignable, transferable or sublicenseable by you except with our prior written consent. These Terms may not be modified or amended except as set forth in the introductory section of these Terms. Any heading, caption or section title contained in these Terms is inserted only as a matter of convenience and in no way defines or explains any section or provision hereof.

15. TERMINATION

Either you or we may terminate your access to our Sites and Apps and to your account at any time, with or without cause, and with or without prior notice. Without limiting the foregoing, we may terminate your access if you violate these Terms. Upon termination for any reason, your right to access and/or use our Sites and Apps will immediately cease. Upon termination, you will have no further access to, and we may delete, any information, files or materials in or related to your account, including, without limitation, any User Submitted Materials. Upon termination, we may delete all information, files and materials related to your account, including any User Submitted Materials, and we will have no obligation whatsoever to save or make any such information, files or materials available to you. You agree that we will have no liability whatsoever to you or any other party as a result of a termination of your access our Sites and Apps and to your account and/or as a result of the deletion or loss of any information, files or materials in or related to your account.

16. ARBITRATION AGREEMENT

If you are a Lifetouch customer in the United States (including its possessions and territories), you and Lifetouch agree that any dispute, claim or controversy arising out of or relating in any way to the Lifetouch service, these Terms of Service and this Arbitration Agreement, shall be determined by binding arbitration or in small claims court. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. You agree that, by agreeing to these Terms of Service, the U.S. Federal Arbitration Act governs the interpretation and enforcement of this provision, and that you and Lifetouch are each waiving the right to a trial by jury or to participate in a class action. This arbitration provision shall survive termination of this Agreement and the termination of your Lifetouch account.

If you elect to seek arbitration or file a small claim court action, you must first send to Lifetouch, by certified mail, a written Notice of your claim ("Notice"). The Notice to Lifetouch must be addressed to: General Counsel, Lifetouch, Inc., 11000 Viking Drive, Eden Prairie, MN 55344 ("Notice Address"). If Lifetouch initiates arbitration, it will send a written Notice to the email address used for your account. A Notice, whether sent by you or by Lifetouch, must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). If Lifetouch and you do not reach an agreement to resolve the claim within 30 days after the Notice is received, you or Lifetouch may commence an arbitration proceeding or file a claim in small claims court.

If you elect to seek arbitration or file a small claim court action, you must first send to Lifetouch, by certified mail, a written Notice of your claim ("Notice"). The Notice to Lifetouch must be addressed to: General Counsel, Lifetouch, Inc., 11000 Viking Drive, Eden Prairie, MN 55344 ("Notice Address"). If Lifetouch initiates arbitration, it will send a written Notice to the email address used for your account. A Notice, whether sent by you or by Lifetouch, must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). If Lifetouch and you do not reach an agreement to resolve the claim within 30 days after the Notice is received, you or Lifetouch may commence an arbitration proceeding or file a claim in small claims court.

You may download or copy a form Notice and a form to initiate arbitration at www.adr.org. If you are required to pay a filing fee, after Lifetouch receives notice at the Notice Address that you have commenced arbitration, Lifetouch will promptly reimburse you for your payment of the filing fee, unless your claim is for greater than US\$10,000, in which event you will be responsible for filing fees.

The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by this Agreement, and will be administered by the AAA. The AAA Rules and Forms are available online at www.adr.org, by calling the AAA at 1-800-778-7879, or by writing to the Notice Address. The arbitrator is bound by the terms of this Agreement. All issues are for the arbitrator to decide, including issues relating to the scope, interpretation and enforceability of this arbitration agreement. Unless Lifetouch and you agree otherwise, any arbitration hearings will take place in the county of your residence.

If your claim is for US\$10,000 or less, we agree that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds US\$10,000, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. If the arbitrator issues you an award that is greater than the value of Lifetouch's last written

settlement offer made before an arbitrator was selected (or if Lifetouch did not make a settlement offer before an arbitrator was selected), then Lifetouch will pay you the amount of the award or US\$1,000, whichever is greater. Except as expressly set forth herein, the payment of all filing, administration and arbitrator fees will be governed by the AAA Rules.

YOU AND LIFETOUCH AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and Lifetouch agree otherwise, the arbitrator may not consolidate more than one person's claims with your claims, and may not otherwise preside over any form of a representative or class proceeding. If this waiver of the right to bring class or representative claims is found to be unenforceable, then the entirety of this Arbitration Agreement shall be null and void.

The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim, except that the Arbitrator may award the excluded forms of relief if these exclusions are prohibited by law.

If any term, condition or provision of this Arbitration Agreement is held by an Arbitrator to be invalid, void or otherwise unenforceable, such provision will be enforced to the maximum extent possible, or, if incapable of such enforcement, will be deemed deleted from the Arbitration Agreement, and the remainder of the Arbitration Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated, except that the Arbitrator shall not under any circumstance preside over any class or representative claim without the consent of you and Lifetouch.

Questions or Comments. If you have any questions or comments related to these Terms of Service or a Site or App that links to them, please contact us through any means described in the "Contact Us" features of this Website or by writing to Lifetouch Inc., 11000 Viking Drive, Eden Prairie, MN 55344, attention: Corporate Communications.

Order Pictures

Preschool
School K-12
Prestige | Senior
Yearbooks
Sports
Commencements
Special Events
Church
JCPenney Portraits

Photography Services

Preschool
School K-12
Prestige | Senior
Yearbooks
Sports
Commencements
Special Events
Church
Business Headshots
JCPenney Portraits

Lifetouch.

Contact us
Who we are
Careers

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

Shutterfly, Inc.; Lifetouch, Inc.; Lifetouch National School Studios, Inc.; and Does 1-10

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

Shawna Allen

E-FILED FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
2/14/2020 11:09 AM
Clerk of Court
Superior Court of CA,
County of Santa Clara
20CV363509
Reviewed By: D Harris
Envelope: 4031893

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
Santa Clara Superior Court

CASE NUMBER: (Número del Caso):
20CV363509

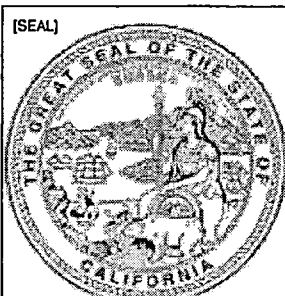
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Ted Mechtenberg, Da Vega Fisher Mechtenberg LLP, 1567 Spinnaker Drive, Suite 201, Ventura, CA 93001

DATE: 2/14/2020 11:09 AM Clerk of Court Clerk, by D Harris, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☒ on behalf of (specify): LIFETOUCH NATIONAL SCHOOL STUDIOS, INC.
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
- ☐ by personal delivery on (date)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
191 N. FIRST STREET
SAN JOSE, CA 95113-1090

Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 3/9/2020 10:12 AM
Reviewed By: R. Walker
Case #20CV363509
Envelope: 4138408

TO: FILE COPY

RE: Allen v. Shutterfly, Inc., et al.
CASE NUMBER: **20CV363509**

**ORDER DEEMING CASE COMPLEX AND STAYING DISCOVERY
AND RESPONSIVE PLEADING DEADLINE**

WHEREAS, the Complaint was filed by Plaintiff **SHAWNA ALLEN** ("Plaintiff") in the Superior Court of California, County of Santa Clara, on **February 14, 2020** and the matter was assigned to Department **3** (Complex Civil Litigation), the **Honorable Patricia M. Lucas** presiding, pending a ruling on the complexity issue;

IT IS HEREBY ORDERED that:

The Court determines that the above-referenced case is **COMPLEX** within the meaning of California Rules of Court 3.400. The matter remains assigned, for all purposes, including discovery and trial, to Department **3** (Complex Civil Litigation), the **Honorable Patricia M. Lucas** presiding.

The parties are directed to the Court's local rules and guidelines regarding electronic filing and to the Complex Civil Guidelines, which are available on the Court's website.

Pursuant to California Rules of Court, Rule 3.254, the creation and maintenance of the Master Service List shall be under the auspices of (1) Plaintiff **SHAWNA ALLEN**, as the first-named party in the Complaint, and (2) the first-named party in each Cross-Complaint, if any.

Pursuant to Government Code section 70616(c), each party's complex case fee is due within ten (10) calendar days of this date.

Plaintiff shall serve a copy of this Order on all parties forthwith and file a proof of service within seven (7) days of service.

Any party objecting to the complex designation must file an objection and proof of service within ten (10) days of service of this Order. Any response to the objection must be filed within seven (7) days of service of the objection. The Court will make its ruling on the submitted pleadings.

The Case Management Conference remains set for **June 12, 2020 at 10:00 a.m. in Department 3** and all counsel are ordered to attend in person.

Counsel for all parties are ordered to meet and confer in person at least 15 days prior to the First Case Management Conference and discuss the following issues:

1. Issues related to recusal or disqualification;
2. Issues of law that, if considered by the Court, may simplify or further resolution of the case, including issues regarding choice of law;

3. Appropriate alternative dispute resolution (ADR), for example, mediation, mandatory settlement conference, arbitration, mini-trial;
4. A plan for preservation of evidence and a uniform system for identification of documents throughout the course of this litigation;
5. A plan for document disclosure/production and additional discovery; which will generally be conducted under court supervision and by court order;
6. Whether it is advisable to address discovery in phases so that information needed to conduct meaningful ADR is obtained early in the case (counsel should consider whether they will stipulated to limited merits discovery in advance of certification proceedings), allowing the option to complete discovery if ADR efforts are unsuccessful;
7. Any issues involving the protection of evidence and confidentiality;
8. The handling of any potential publicity issues;

Counsel for Plaintiff is to take the lead in preparing a Joint Case Management Conference Statement to be filed 5 calendars days prior to the First Case Management Conference, and include the following:

1. A Statement as to whether additional parties are likely to be added and a proposed date by which all parties must be served;
2. Service lists identifying all primary and secondary counsel, firm names, addresses, telephone numbers, email addresses and fax numbers for all counsel;
3. A description of all discovery completed to date and any outstanding discovery as of the date of the conference;
4. Applicability and enforceability of arbitration clauses, if any;
5. A list of all related litigation pending in other courts, including Federal Court, and a brief description of any such litigation, and a statement as to whether any additional related litigation is anticipated (CRC 3.300);
6. A description of factual and legal issues – the parties should address any specific contract provisions the interpretation of which may assist in resolution of significant issues in the case;
7. The parties' tentative views on an ADR mechanism and how such mechanism might be integrated into the course of the litigation;
8. Whether discovery should be conducted in phases or limited; and if so, the order of phasing or types of limitations of discovery. If this is a class action lawsuit, the parties should address the issue of limited merits discovery in advance of class certification motions.

To the extent the parties are unable to agree on the matters to be addressed in the Joint Case Management Conference Statement, the positions of each party or of various parties should be set forth separately and attached to this report as addenda. The parties are encouraged to propose, either jointly or separately, any approaches to case management they believe will promote the fair and efficient handling of this case. The Court is particularly interested in identifying potentially dispositive or significant threshold issues the early resolution of which may assist in moving the case toward effective ADR and/or a final disposition.

STAY ON DISCOVERY AND RESPONSIVE PLEADING DEADLINE Pending further order of this Court, the service of discovery and the obligation to respond to any outstanding discovery is stayed. However, Defendant(s) shall file a Notice of Appearance for purposes of identification of counsel and preparation of a service list. The filing of such a Notice of Appearance shall be without prejudice to the later filing of a motion to quash to contest jurisdiction. Parties shall not file or serve responsive pleadings, including answers to the complaint, motions to strike, demurrers, motions for

change of venue and cross-complaints until a date is set at the First Case Management Conference for such filings and hearings.


This Order is issued to assist the Court and the parties in the management of this "Complex" case through the development of an orderly schedule for briefing and hearings. This Order shall not preclude the parties from continuing to informally exchange documents that may assist in their initial evaluation of the issues presented in this Case.

Plaintiff shall serve a copy of this Order on all the parties in this matter forthwith.

SO ORDERED.

Date: _____

Signed: 3/6/2020 03:02 PM


Hon. **Patricia M. Lucas**
Judge of the Superior Court

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408) 882-2700, or use the Court's TDD line, (408) 882-2690 or the Voice/TDD California Relay Service, (800) 735-2922.

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Ted Mechtenberg, SBN 219602 Da Vega Fisher Mechtenberg LLP 640 W. California Ave., Suite 210 Sunnyvale, CA 94086 TELEPHONE NO: 408.758.8974 FAX NO: 877.535.9358 ATTORNEY FOR (Name): Plaintiff Shawna Allen and Proposed Class		Electronically Filed by Superior Court of CA, County of Santa Clara, on 2/14/2020 11:09 AM Reviewed By: D Harris Case #20CV363509 Envelope: 4031893
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 N. First Street MAILING ADDRESS: 191 N. First Street CITY AND ZIP CODE: San Jose 95113 BRANCH NAME: Downtown Court House		
CASE NAME: Allen v. Lifetouch, etc.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	
Complex Case Designation: <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		CASE NUMBER: 20CV363509 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input checked="" type="checkbox"/> Large number of separately represented parties	d. <input checked="" type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): Five

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: February 14, 2020
 Ted Mechtenberg

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller
Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

E-FILED
2/14/2020 11:09 AM
Clerk of Court
Superior Court of CA,
County of Santa Clara
20CV363509
Reviewed By: D Harris

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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

SHAWNA ALLEN, individually and on
behalf and all others similarly situated,

Plaintiffs,

vs.

SHUTTERFLY, INC., LIFETOUCH, INC.,
LIFETOUCH NATIONAL SCHOOL
STUDIOS, INC., and DOES 1-10,
inclusive,

Defendants.

Case No. 20CV363509

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF:**

- (1) SOLICITATION OF PAYMENT FOR
UNORDERED GOODS (Civ. Code §
1716);**
- (2) VIOLATION OF CIV. CODE § 1584.5;**
- (3) VIOLATION OF THE CALIFORNIA
CONSUMERS LEGAL REMEDIES ACT
(Civ. Code § 1750)**
- (4) UNFAIR COMPETITION (Bus. & Prof.
Code 17200 et seq.)**
- (5) UNJUST ENRICHMENT**

DEMAND FOR JURY TRIAL

Individual and Representative Plaintiff Shawna Allen ("Plaintiff" or "Allen") brings this
action on behalf of herself and all others similarly situated ("the Class"), and on information and
belief alleges against Defendants Shutterfly, Inc. ("Shutterfly"), Lifetouch, Inc. ("Lifetouch"),
Lifetouch National School Studios, Inc. ("Lifetouch NS"), and Does 1-10 (collectively

1 “Defendants”) the following:

2 **NATURE OF THE CASE**

3 1. Defendants are in the business of selling school pictures. They contract with
4 schools to provide bi-annual portrait sessions within schools and sell the portraits to students’
5 parents and guardians.

6 2. The pictures that Defendants take in the Spring are regularly sold under a so-called
7 “Family Approval” model whereby students’ portraits and/or products printed with their portraits
8 are sent home with the students. They are accompanied by written materials directing parents and
9 guardians to purchase the portraits and/or products or return them to school.

10 3. As explained in detail below, Defendants sent unordered portraits and/or products
11 home with Plaintiff’s children and sought payment for them in violation of California law and the
12 laws of the states across the nation.

13 4. Each spring of the last three years, Defendants offered portraits of Plaintiff’s
14 children for sale. Included in Defendants’ offer were unsolicited portraits of Plaintiff’s children
15 that were not actually ordered or requested by Plaintiff, which are deemed an unconditional gift.
16 Each of the last three springs, however, Defendants sent Plaintiff statements requesting payment
17 for the portraits. This practice is in direct violation of Cal. Civil Code §§ 1584.5 and 1716, the
18 Consumers Legal Remedies Act, Cal. Civ. Code § 1750, and the California Unfair Competition
19 Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*

20 5. This case is brought as a class action under California Code of Civil Procedure
21 (“CCP”) §382 and Civil Code § 1781. This class action lawsuit arises out of Defendants’ policy
22 and practice of illegally sending unordered portraits and other products to Plaintiff and class
23 members and requesting payment for these unsolicited goods.

24 6. As a result of Defendants’ violations, thousands of individuals throughout the
25 United States including individuals within the state of California received unsolicited portraits of
26 their children that were not ordered or requested.

27 **The Parties**

28 7. **Plaintiff Shawna Allen** (“Allen”) is an individual who resides in the state of

1 Kansas. During all times relevant she has resided in Olathe, Johnson County, Kansas.

2 8. **Defendant Shutterfly, Inc.** is incorporated in Delaware. Defendant Shutterfly,
3 Inc. has its principal place of business at 2800 Bridge Parkway, Redwood City, San Mateo
4 County, California. Defendant Shutterfly, Inc. can be served via its registered agent, The
5 Prentice-Hall Corporation System, Inc., 251 Little Falls Drive, Wilmington, DE 19808.

6 9. **Defendant Lifetouch, Inc.** and its wholly owned subsidiary, **Defendant**
7 **Lifetouch National School Studios, Inc.**, are Minnesota corporations with their principal place
8 of businesses in Minnesota. They may be served via their registered agent, Corporation Service
9 Company, located at 2345 Rice Street, Suite 230, Roseville, MN 55113.

10 **Fictitious Defendants**

11 10. Defendants Does 1-10, inclusive, are sued herein under fictitious names. Their
12 true names and capacities are unknown to Plaintiff at this time. When their true names and
13 capacities are ascertained, Plaintiff will amend this Complaint by inserting their true names and
14 capacities. Plaintiff is informed and believes, and thereon alleges that each of the fictitiously-
15 named Defendants are responsible in some manner for the occurrences alleged herein and that
16 Plaintiff's and the proposed Class Members' damages and penalties alleged herein were
17 proximately caused by such Defendants.

18 **Agency**

19 11. Plaintiffs are informed, believe, and thereon allege that each of the Defendants
20 herein was, at all times relevant in this action, the agent, employee, representing partner, officer,
21 director, subsidiary, affiliate, parent corporation, successor and/or predecessor in interest and/or
22 joint venture of the remaining Defendants and was acting within the course and scope of that
23 relationship. Plaintiffs are further informed, believe, and thereon allege that each of the
24 Defendants herein gave consent to, ratified, adopted, approved, controlled, aided and abetted,
25 and/or otherwise authorized the acts alleged herein to the remaining Defendants.

26 **Jurisdiction and Venue**

27 12. This Court has personal jurisdiction over the Defendants because they have
28 purposefully availed themselves of the privilege of conducting business in California insofar as

1 Shutterfly has its principal place of business in the State and Defendants maintain systematic and
2 continuous business contacts with California.

3 13. Jurisdiction and venue are proper in this Court pursuant to Defendants' Terms of
4 Service and corresponding forum selection clause, which provide that any dispute shall "submit
5 to the exclusive jurisdiction of any State or Federal court located in the County of Santa Clara,
6 California, United States of America."

7 14. The Terms of Service also contain a choice of law provision dictating that
8 California law will apply to all consumers nationwide: "These Terms are governed and construed
9 in accordance with the laws of the State of California, United States of America, without regards
10 to its conflict of law provisions."

11 15. A copy of the Terms of Service is attached as Exhibit 1 and incorporated into this
12 complaint.

13 **General Allegations**

14 16. Plaintiff, on information and belief, alleges the following:

15 17. To millions of parents and students, "Shutterfly" and "Lifetouch" are household
16 names.

17 18. Defendants have described themselves as "the national leader in school portraits."

18 19. Defendants are the nation's largest producer of school photos.

19 20. As explained in their March 1, 2019 Form 10-K SEC filing, Defendants capture
20 images of more than 25,000,000 individuals each year.

21 21. In one form or another, Defendants' photos find their way to the wallets,
22 refrigerators, bookshelves and picture frames of more than 48 million homes across North
23 America each year.

24 22. The school photo industry is worth \$1.6 billion a year, according to IBISWorld, a
25 market research firm based in Los Angeles.

26 23. Defendants control approximately 40% of the market for school photos, but they
27 are facing industry challenges.

28 24. As explained in a May 10, 2019, New York Times article, the industry is wobbling

1 because of the spread of digital cameras and smartphones, high prices, schools' photo fees, and
2 decreasing sales. <https://www.nytimes.com/2019/05/10/style/school-photos-costs.html>.

3 25. There is also increased competition from local companies.

4 26. Defendants began selling Spring portraits under a "Family Approval" model in
5 some markets, including in the Olathe School District and, on information and belief, other
6 communities throughout the nation including California, whereby portraits and/or products are
7 sent home with students, and their parents and guardians are directed to pay for the portraits
8 and/or products or return them.

9 27. Defendants additionally seek to collect for the portraits and/or products by
10 emailing parents and guardians with reminders to pay.

11 28. During the relevant time, Defendants have sold Spring portraits and/or products
12 throughout the country including California under the "Family Approval" model.

13 29. By way of example, Defendants sent unordered portraits and/or products to
14 Plaintiff each Spring during the past three years.

15 30. Each Spring, Plaintiff's children came home from school with Lifetouch portraits
16 and/or products taken by Defendants under the "Family Approval" model described above.

17 31. In or about May 2017, Plaintiff received an email from Defendants stating "Pay
18 for your Spring Portrait Package," and advising that portrait packages should be coming home
19 soon. The email directed Plaintiff to select her favorites and pay at mylifetouch.com. The emails
20 further thanked her if she had already paid and directed her to return any unpurchased portraits to
21 school.

22 32. On or about March 2, 2018, Plaintiff received an email from Defendants stating
23 that "Spring Picture Day is Monday, March 5." Defendants' email gave tips on what her children
24 should wear and "how to prepare for Picture Day."

25 33. In or about March of 2018, Plaintiff received an email from Defendants stating
26 that Spring Portraits would be coming home soon with her children. The email directed Plaintiff
27 to select her favorites and to pay at mylifetouch.com. The email further directed her to return any
28 unpurchased portraits to school.

1 34. The outside of the 2017 envelope containing the portraits and/or products states:
2 “Details inside on how to buy.”

3 35. The back of the 2017 envelopes states: “Send payment to school or pay at
4 mylifetouch.com.”

5 36. The flap of the 2017 envelope states: “Time-sensitive materials.”

6 37. The outside of the 2018 envelope containing the portraits and/or products states:
7 “Details inside on how to buy.”

8 38. The back of the 2018 envelope states: “Send payment to school or pay at
9 mylifetouch.com.”

10 39. The flap of the 2018 envelope states: “Time-sensitive materials.”

11 40. Inside the 2017 envelope were one 8x10” portrait, two 5x7” portraits, four 3x5”
12 portraits, eight 2x3” portraits, and one fun pack containing a bag tag, key tags, a bookmark, and a
13 door hanger with portraits printed on them.

14 41. Similarly, inside the 2018 envelope were one 8x10” portrait, two 5x7” portraits,
15 four 3x5” portraits, eight 2x3” portraits, and one fun pack containing a bag tag, key tags, a
16 bookmark, and a door hanger with portraits printed on them.

17 42. The 2017 envelope contained two forms purporting to provide parents and
18 guardians with a choice as to how to proceed.

19 43. The first form states: “The choice is yours ...” and gives parents and guardians the
20 choice to either (1) purchase portraits and/or products using the form, (2) pay at mylifetouch.com,
21 or (3) “return envelope and any portraits not purchased to school within 7 days.” The form states
22 the entire package costs \$45.00.

23 44. The second form, printed on an envelope, states: “Pay for your Spring Portraits
24 online at mylifetouch.com.”

25 45. Plaintiff purchased the entire packet of spring portraits and products from
26 Lifetouch in Spring 2017 with a check. She did not purchase the spring 2017 portraits online.

27 46. Plaintiff believes she purchased the entire packet of spring portraits and products
28 from Lifetouch in Spring 2018 with cash. She did not purchase the spring 2018 portraits online.

1 47. On information and belief, Plaintiff states that she received similar envelopes from
2 Defendants containing unordered school portraits and/or products in other years as well.

3 48. In all situations alleged above, Plaintiff did not order these portraits and/or
4 products, nor did Defendants ask Plaintiff to pre-order them.

5 49. Defendants' communications, including their envelopes, written materials, and
6 emails do not disclose that California law prohibits the distribution of unordered merchandise
7 and/or that these portraits and/or products are unconditional gifts that do not require payment or
8 return.

9 50. Further, through their communications, including their envelopes, written
10 materials and emails, Defendants willfully misrepresent, misstate and/or improperly suggest that
11 parents and guardians are legally obligated to purchase the portraits and/or products or return
12 them.

13 51. On information and belief, Defendants have distributed the same or similar
14 envelopes containing unordered school portraits and/or products to elementary and middle school
15 students in school districts across the country.

16 52. On information and belief, Defendants have also sent the same or similar emails
17 directing and/or reminding to pay for the unordered portraits and/or products or return them to
18 school to parents and guardians of elementary and middle school students.

19 53. Defendants' "Family Approval" model directly violates California law, as well as
20 the consumer protection laws of each state.

21 54. Not only is this scheme illegal, misleading, and unconscionable, but sending
22 unsolicited goods home with students and emailing their homes unfairly pressures their parents
23 and guardians to pay for Defendants' expensive portraits and/or products or risk disappointing
24 their children and/or face embarrassment in front of teachers and school administrators.

25 55. On information and belief, Defendants contract with hundreds, if not thousands, of
26 school districts nationwide to be their exclusive school portrait for purposes of, among other
27 things, school portraits, yearbooks, class/extracurricular portraits, and staff portraits.

28 56. Defendants are aware that their practice of sending students home with unordered

1 portraits and/or products and seeking payment for them is unlawful but continue the practice to
2 increase their profits.

3 57. Shutterfly stated in a March 1, 2019, SEC filing:

4 In some markets, Lifetouch offers spring portraits under a “Family
5 Approval” model whereby portrait products are distributed by the school to
6 parents for review. Parents are asked to pay for the products they elect to
7 keep (if any) and to return any products they do not wish to purchase to the
8 school. Lifetouch has been and in the future **may be subject to claims
9 from individuals that these products qualify as “gifts” and/or that the
10 program does not comply with legislation pertaining to “unsolicited
11 goods.”** While we do not believe that such legislation is applicable to
12 school portraits, if Lifetouch becomes subject to such claims and is
13 required or elect to curtail the use of the Family Approval model, its
14 business and revenue may be negatively impacted.

15 Shutterfly, Inc., Quarterly Report (Form 10-K), at 29 (March 1, 2019), available at
16 [https://www.sec.gov/ix?doc=/Archives/edgar/data/1125920/000112592019000008/sfly-
17 20181231.htm#i_0_64](https://www.sec.gov/ix?doc=/Archives/edgar/data/1125920/000112592019000008/sfly-20181231.htm#i_0_64) (Emphasis added).

18 58. Plaintiff brings this class action on behalf of herself and all similarly situated
19 individuals to stop Defendants’ illegal use of the “Family Approval” model and recover
20 Defendants’ ill-gotten gains.

21 **Class Action Allegations**

22 59. Plaintiff brings this action individually and as a class action on behalf of an opt-out
23 class (the “Class”) defined as follows:

24 **All individuals who received and paid for unordered school
25 portraits and/or products from Defendants within the past four
26 years.**

27 60. Plaintiffs reserve the right under Rule 3.765(b), California Rules of Court, to
28 amend or modify the class description with greater specificity or further division into a subclasses
or limitations to particular issues.

61. This action is brought, and may properly be maintained, as a class action pursuant
to California Code of Civil Procedure §382 and Civil Code § 1781 (and the analogous provisions
of Federal Rules of Civil Procedure 23(a)(1)-(4) and 23(b).)

62. Defendants, via their unlawful actions, have violated various California consumer

1 protection laws along with California Civil code prohibiting such conduct. There is a well-
 2 defined community of interest in the litigation, and the proposed class is easily ascertainable. As
 3 described below, this action also satisfies the numerosity, commonality, predominance, typicality,
 4 adequacy, and superiority requirements.

5 **Numerosity**

6 63. A class action is the only available method for the fair and efficient adjudication of
 7 this controversy. Although the exact number and identities of Class Members are unknown to
 8 Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is
 9 informed and believes that the Class includes at least 1000 persons. On information and belief,
 10 therefore, Plaintiff alleges that the members of the Class are so numerous that joinder of all
 11 members is impractical, if not impossible. Membership in the Class will be determined upon
 12 analysis of, *inter alia*, telephone systems records maintained by Defendants.

13 **Commonality and Predominance**

14 64. The Plaintiffs and the Class share a community of interest because there are
 15 numerous common issues of fact and law that predominate over any questions and issues solely
 16 affecting individual members. Such common factual and legal issues include, but are not limited
 17 to, the following:

- 18 a. Whether Defendants had a policy or practice of sending Plaintiff and class
 19 members unordered portraits and products and then demanding payment;
- 20 b. Whether Defendants had a policy or practice during the Class Period of not
 21 disclosing/providing notice to the proposed Class Members that these portraits and products
 22 should be considered a "gift";
- 23 c. Whether California law applies to the claims of Plaintiff and class members;
- 24 d. Whether Defendants violated Cal. Civ. Code § 1584.5;
- 25 e. Whether Defendants violated Cal. Civ. Code § 1716;
- 26 f. Whether Defendants violated California's Consumer Legal Remedies Act (Civ.
 27 Code § 1750 et seq.);
- 28 g. Whether Defendants violated the California Unfair Competition Law, § 17200.

Typicality

65. Plaintiff's claims are typical of the claims of the proposed Class. Plaintiff and all Class Members are based on the same legal theories and arise out of the same common course of conduct and unlawful policies or practices of Defendant, resulting in the same injury to Plaintiffs and Class Members.

Adequacy of Representation

66. Plaintiff will fairly and adequately represent the Class. Plaintiff has the same interests in the litigation of this case as the Class Members. Plaintiff is committed to vigorous prosecution of this case and has retained competent counsel who are experienced in class actions of this nature. Plaintiff is not subject to any individual defenses different from those conceivably applicable to the Class as a whole. Plaintiff and her counsel are not aware of any interest adverse to those of the other proposed Class Members.

Superiority of Class Action

67. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all Class Members is impractical. The nature of this action and the format of laws available to Plaintiff and Class Members identified herein make the class action format a particularly efficient and appropriate procedure to redress the wrongs alleged herein. If each Class Member were required to file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual class member with their vastly superior financial and legal resources. Requiring each class member to pursue an individual remedy would also discourage the assertion of lawful claims by Class Members who would be disinclined to file an action against Defendant.

68. Even if every Class Member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous cases would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same factual issues leading to

1 establishment of inconsistent rulings and standards. The prosecution of individual actions may
 2 create a risk of adjudications that as a practical matter may be dispositive of the Class Members
 3 interest not parties to those adjudications or that may impede or impair the ability of those non-
 4 party Class Members to protect their own interest. Further, it will allow the illegal actions (that
 5 are difficult to discovery due to their convert nature) and very real harm suffered by numerous
 6 putative Class Members to continue unabated due to most individual's inability to pursue and
 7 enforce such individual claims because of the limited statutory penalty. By contrast, the conduct
 8 of this action as a class action, with respect to some or all of the issues presented herein, presents
 9 fewer management difficulties, conserves the resources of the parties and the court system, and
 10 protects the rights of each Class Member. Plaintiff anticipates no management difficulties in this
 11 litigation.

12 69. Further, the Defendant has also acted, or have refused to act, in respects generally
 13 applicable to the Class, thereby making appropriate final and injunctive relief, or corresponding
 14 declaratory relief, with regard to Class Members as a whole, as requested herein. Likewise,
 15 Defendant's conduct, as described herein, is unlawful, ongoing, and will continue unless
 16 restrained and enjoined by this Court.

17 **FIRST CAUSE OF ACTION**

18 **Solicitation of Payment for Unordered Goods**

19 **(Civ. Code § 1716)**

20 **(By Plaintiff against All Defendants)**

21 70. Plaintiff incorporates by reference in this cause of action each allegation of all of
 22 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
 23 Does 1-10, and each of them, as follows:

24 71. California Civil Code § 1716 states "It is unlawful for a person to solicit payment
 25 of money by another by means of a written statement or invoice, or any writing that reasonably
 26 could be considered a bill, invoice, or statement of account due, but is in fact a solicitation for an
 27 order, unless the solicitation conforms to subdivisions (b) to (f), inclusive."

28 72. Subsection (b) of § 1716 requires a statement that the solicitation is not a bill as

1 follows:

- 2 • “THIS IS NOT A BILL. THIS IS A SOLICITATION. YOU ARE UNDER NO
- 3 OBLIGATION TO PAY THE AMOUNT STATED ABOVE UNLESS YOU
- 4 ACCEPT THIS OFFER.”
- 5 • “This is a solicitation for the order of goods or services, or both, and not a bill,
- 6 invoice, or statement of account due. You are under no obligation to make any
- 7 payments on account of this offer unless you accept this offer.”

8 73. Defendants’ communications constituted solicitations and these solicitations did
9 not contain the required language or any conspicuous language indicating that these were not
10 bills.

11 74. Defendants’ communications would cause a reasonable recipient to believe that
12 payment was legally required.

13 75. As a direct result of this violation, Plaintiff and the Class were harmed because
14 they paid for unsolicited photos for which they were not obligated to pay.

15 76. Pursuant to Section 1716(g) “Any person damaged by noncompliance with this
16 section, in addition to other remedies, is entitled to damages in an amount equal to three times the
17 sum solicited.”

18 **Second Cause of Action**

19 **Violation of California Civil Code § 1584.5**

20 **(By Plaintiff against all Defendants)**

21 77. Plaintiff incorporates by reference in this cause of action each allegation of all of
22 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
23 Does 1-10, and each of them, as follows:

24 78. California Civil Code § 1584.5 prohibits sellers from offering goods for sale where
25 the offer includes a voluntary and unsolicited sending or providing of goods that were not ordered
26 or requested.

27 79. Defendants are corporations under § 1584.5.

28 80. The school portraits and/or products delivered by Defendants are “goods” under §

1 1584.5.

2 81. During all times relevant, Defendants, or their agents or employees, sent home
3 school portraits and/or products to Plaintiff and the Class that they did not affirmatively order or
4 request.

5 82. Plaintiff and the Class's receipt of these portraits was an unconditional gift to
6 Plaintiff and the Class, and Plaintiff and the Class may use or dispose of the portraits in any
7 manner they see fit without any obligation to Defendants.

8 83. Defendants have continued to send bill statements or otherwise request payment
9 for the portraits from Plaintiff and the Class while concealing that Plaintiff and the Class were not
10 obligated to return or pay for the goods.

11 84. By seeking payment for unordered goods or return them, Defendants were
12 attempting to collect for unordered property, which is a violation of Cal. Civil Code §1584.5.

13 85. As a result of Defendants' violations, Plaintiff and the Class members are entitled
14 to injunctive relief, attorneys' fees and costs.

15 **Third Cause of Action**

16 **Violation of the California Consumers Legal Remedies Act**

17 **(Civ. Code § 1750 et seq.)**

18 **(By Plaintiff against all Defendants)**

19 86. Plaintiff incorporates by reference in this cause of action each allegation of all of
20 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
21 Does 1-10, and each of them, as follows:

22 87. The Consumer Legal Remedies Act ("CLRA"), California Civil Code § 1750, et
23 seq., was designed to protect consumers from unfair and deceptive business practices. To this
24 end, the Consumer Legal Remedies Act sets forth a list of unfair and deceptive acts and practices
25 that are specifically prohibited in any transaction intended to result in the sale or lease of goods or
26 services to a consumer.

27 88. Defendants are "persons" within the meaning of Civil Code §§ 1761(c) and 1770
28 and sell "services" within the meaning of Civil Code §§ 1761(b) and 1770.

1 89. Plaintiff is a consumer within the meaning of Civil Code § 1761(d) and has
2 engaged in a transaction within the meaning of Civil Code §§ 1761(e) and 1770.

3 90. Defendants provide goods and services within the meaning of Civil Code §§
4 1761(b) and 1770.

5 91. California Civil Code §1770(a) provides that “the following unfair methods of
6 competition and unfair or deceptive acts or practices undertaken by any person in a transaction
7 intended to result or which results in the sale or lease of goods or services to any consumer are
8 unlawful” including but not limited to:

9 a. Representing that a transaction confers or involves rights, remedies, or obligations
10 that it does not have or involve, or that are prohibited by law.

11 b. Inserting an unconscionable provision in the contract.

12 92. By reason of the acts and practices alleged in this Complaint, Defendants have
13 engaged in unfair methods of competition and unfair or deceptive acts or practices in a transaction
14 intended to result or which results in the sale of goods or services to any consumer.

15 93. Defendants engaged in these unfair and/or deceptive acts and practices with the
16 intent that they resulted and which did result in the purchase of the photographs and other
17 products at issue in this Complaint.

18 94. Plaintiff reasonably believed, relied, and/or depended on the unlawful, material,
19 false and/or misleading information provided by Defendants that Plaintiff was required to pay for
20 the photographs provided and Plaintiff specifically chose to pay for the photographs based on
21 Defendants’ unlawful, unfair and deceptive conduct.

22 95. As a result of the unlawful, unfair and deceptive acts and practices of Defendants,
23 Plaintiff paid for products for which she had not ordered and was not required to pay. Plaintiff,
24 therefore, suffered monetary harm and is entitled to injunctive and equitable relief, as well as
25 attorneys’ fees and costs of suit.

26 96. At this time, Plaintiff does not currently seek monetary damages as part of their
27 CLRA claim. Following the filing of this Complaint, Plaintiff will mail Defendants a CLRA
28 demand letter in the manner required by statute. If the Defendants do not agree and perform the

1 relief requested in the demand letter within 30 days of its receipt, Plaintiff reserves the right to
 2 amend this Complaint to also then assert a claim for relief for money damages under the CLRA.

3 **Fourth Cause of Action**

4 **Violation of the California Unfair Competition Law**

5 **(Bus. & Prof. Code, § 17200 et seq.)**

6 **(By Plaintiff Against all Defendants)**

7 97. Plaintiff incorporates by reference in this cause of action each allegation of all of
 8 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
 9 Does 1-10, and each of them, as follows:

10 98. Plaintiff brings this cause of action on behalf of herself and the Class as well as on
 11 behalf of the general public, seeking equitable and statutory relief to stop the misconduct of
 12 Defendants, as complained of herein, and to compel disgorgement of all profits obtained by
 13 Defendants through the unfair, unlawful, and/or fraudulent business practices described herein.

14 99. The conduct of Defendants, as alleged herein, constitutes an unlawful business
 15 practice as set forth in Business and Professions Code §§ 17200, *et seq.*

16 100. Specifically, Defendants conducted business activities while failing to comply
 17 with California consumer protection laws as described in this Complaint. Defendants, and each
 18 of them, have intentionally and improperly sent unsolicited goods and sought payment for those
 19 unsolicited goods from Plaintiff and Class members. Section 17200 of the Business and
 20 Professions Code prohibits unfair competition by prohibiting unlawful, unfair, or fraudulent
 21 business practices or acts. Defendants' failure to adopt policies in accordance and/or adherence
 22 with these laws, all of which are binding upon and burdensome to Defendants' competitors,
 23 engenders an unfair competitive advantage for Defendants, thereby constituting an unfair
 24 business practice, as set forth in California Business and Professions Code §§ 17200, *et seq.*

25 101. Defendants' conduct as alleged herein has damaged Plaintiff and the Class
 26 Members by intentionally seeking payment for unsolicited and unordered goods. Such conduct
 27 was substantially injurious to Plaintiff and the Class.

28 102. Under the circumstances alleged herein, it would be inequitable and result in a

1 miscarriage of justice for Defendants to continue to retain the property of Plaintiff and the Class
 2 Members, entitling Plaintiff and the Class Members to restitution of the unfair benefits obtained
 3 and disgorgement of Defendants' ill-gotten gains.

4 103. As a result of Defendants' unlawful and unfair business practices, Plaintiff and
 5 Class Members are entitled to, and hereby do, seek restitution and disgorgement and other
 6 appropriate injunctive and other relief available under California Business and Professions Code
 7 §§ 17200, *et seq.*

8 **Fifth Cause of Action**

9 **Unjust Enrichment**

10 **(By Plaintiff against all Defendants)**

11 104. Plaintiff incorporates the previous allegations by reference in this cause of action
 12 each allegation of all of the foregoing paragraphs as if fully restated herein, and further allege
 13 against Defendants and Does 1-10, and each of them, as follows:

14 105. Defendants have received money from the Plaintiff and class members in
 15 connection with Defendants' conduct in violation of California law. Defendants would be
 16 unjustly enriched if they were permitted to retain those funds, and Defendants should be ordered
 17 to restore said funds to Plaintiff and the class members.

18 106. Plaintiff alleges this unjust enrichment claim in the alternative to relief provided
 19 under any legal claim alleged herein.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiff, on behalf of herself and the Proposed Class and prays for
 22 judgment and the following specific relief against Defendants, jointly and separately as follows:

23 A. That the Court determine and order that this action may be maintained and
 24 certified as a class action under California Code of Civil Procedure § 382 and Civil Code § 1781;

25 B. That the Court order Plaintiff appointed as representative of the Class and appoint
 26 counsel for Plaintiff as class counsel;

27 C. For monetary damages in the amount of three times the sum solicited pursuant to
 28 Civil Code § 1716;

- 1 D. For injunctive relief pursuant to Civil Code 1584.5;
- 2 E. That Plaintiff, the Class Members, and represented parties be awarded reasonable
- 3 attorneys' fees and costs pursuant to Civil Code §§ 1584.5, 1780(e) and/or other applicable law;
- 4 and,
- 5 F. That Plaintiffs and the Class Members be awarded prejudgment interest on all
- 6 damages and other relief awarded;
- 7 G. That Defendants are found to have violated Business & Professions Code
- 8 §§ 17200, *et seq.*, and be enjoined to cease and desist from unlawful activities in violation of
- 9 Business & Professions Code §§ 17200, *et seq.*
- 10 H. That Defendants be ordered and enjoined to pay restitution to Plaintiff and Class
- 11 Members due to Defendants' unlawful activities, pursuant to Business & Professions Code
- 12 §§ 17200, *et seq.*;
- 13 I. That Defendants be ordered to pay restitution; and
- 14 J. That Plaintiff, the Class Members, and represented parties receive an award of
- 15 such other and further relief as this Court may deem appropriate.

16

17 Dated: February 14, 2020 DA VEGA | FISHER | MECHTENBERG LLP

18

19 By: 

20 Ted Mechtenberg, SBN 219602

21 Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all others similarly situated, hereby demand a trial by jury for all issues so triable.

Dated: February 14, 2020 DA VEGA | FISHER | MECHTENBERG LLP

By: 

Ted Mechtenberg, SBN 219602

Attorneys for Plaintiff

EXHIBIT 1



HOME

ORDER PICTURES

PHOTOGRAPHY SERVICES

WHO WE ARE

Terms of Service

Terms of Service

Last updated: July 2018

On April 2, 2018, Lifetouch Inc. joined the Shutterfly family of brands. The following Terms of Service were updated to align the combined companies' policies and practices where applicable.

Welcome to Lifetouch and our family of brands. Please read these Terms of Service ("Terms") carefully. They contain the legal terms and conditions that govern your use of and access to our websites, mobile sites, and mobile applications that link to these Terms (collectively, our "Sites and Apps"), as well as our provision of products and services to our customers. If you make a purchase, order products, schedule an appointment or otherwise transact with us through our Sites and Apps, such transactions may also be governed by policies, terms and conditions specific to the product or service that are communicated to you when offering and/or before confirming the transaction, for example terms made part of an e-commerce checkout process or limitations stated in promotional materials. Please review these additional terms before making any transaction with us.

Note to Lifetouch school accounts: Separate terms of service, not these Terms, apply to products and services (including websites, applications and online services) that are designed for the use and benefit of the schools and school districts Lifetouch provides service to for their administrative and educational purposes and which are used by or at the direction of teachers or other school or district employees (a "School Service"). Please refer to the Terms of Service associated with those School Services or contact us through your Lifetouch school account representative for further information.

By visiting any of our Sites and Apps, you are signifying your assent to these Terms and our Privacy Policy, which is incorporated herein by reference. Any products ordered or services used through any of our Sites and Apps are also governed by these Terms. We may revise these Terms from time to time by posting a revised version. YOUR CONTINUED USE OF ANY OF THE SITES AND APPS AFTER WE POST ANY CHANGES WILL CONSTITUTE YOUR ACCEPTANCE OF SUCH CHANGES. IN ADDITION, BY ORDERING OUR PRODUCTS OR USING OUR SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ AND REVIEWED THESE TERMS IN THEIR ENTIRETY, YOU AGREE TO THESE TERMS AND THE PRIVACY POLICY AND THESE TERMS CONSTITUTE BINDING AND ENFORCEABLE OBLIGATIONS ON YOU.

NOTE: THIS TERMS OF SERVICE CONTAINS AN ARBITRATION AND CLASS ACTION WAIVER PROVISION IN THE "ARBITRATION" SECTION BELOW THAT AFFECTS YOUR RIGHTS UNDER THIS TERMS OF SERVICE AND WITH RESPECT TO ANY DISPUTE BETWEEN YOU AND US OR OUR AFFILIATES

1. YOUR USE OF OUR SITES AND APPS

You may access and use our Sites and Apps solely for your personal, noncommercial use. Except as expressly authorized hereunder, our Sites and Apps may not be reproduced, duplicated, copied, sold, resold, visited, reverse-engineered or otherwise exploited for any commercial purpose without our prior written authorization. We reserve the right to alter or discontinue our Sites and Apps, in whole or in part, at any time in our sole discretion.

Subject to and conditioned upon your compliance with these Terms, we grant to you a non-exclusive, non-transferable, limited right and license, without right of sublicense, to access and use our Sites and Apps, including any images, text, graphics, sounds, data, links and other materials incorporated into our Sites and Apps (other than your User Submitted Materials as defined below), solely as made available by us and solely for your own personal purposes. Except as expressly authorized by these Terms, you may not use, reproduce, distribute, modify, transmit or publicly display any portion of our Sites and Apps or create derivative works of any portion our Sites and Apps without our written consent. While using any of our Sites and Apps, you agree not to:

- Access or attempt to access images that are not your images or accounts that you do not own, unless given permission by the image subject (or, in the case of a minor, the image subject's parent or legal guardian);
- Upload or download photographs of people who have not given permission (or, in the case of a minor, whose parent or legal guardian has not given permission) for their photographs to be uploaded or downloaded.
- Defame, abuse, harass, stalk, threaten or otherwise violate the rights of others, including, without limitation, others' privacy rights or rights of publicity;
- Impersonate any person or entity or use any fraudulent, misleading or inaccurate email address or other contact information;
- Restrict or inhibit any other user from using any of our Sites and Apps, including, without limitation, by means of "hacking" or defacing any portion our Sites and Apps;
- Violate any applicable laws or regulations;
- Upload to, transmit through, or display on any of our Sites and Apps (a) any material that is unlawful, fraudulent, threatening, abusive, libelous, defamatory, obscene or otherwise objectionable, or infringes our or any third party's intellectual property or other rights; (b) any confidential, proprietary or trade secret information of any third party; or (c) any advertisements, solicitations, chain letters, pyramid schemes, investment opportunities or other unsolicited commercial communication (except as otherwise expressly permitted by us);
- Engage in spamming;
- Transmit any software or other materials that contain any viruses, worms, trojan horses, defects, or other destructive items;
- Modify, adapt, translate, distribute, reverse engineer, decompile or disassemble any portion of our Sites and Apps; and

- Remove any copyright, trademark or other proprietary rights notices contained in or displayed on any portion of our Sites and Apps
- Display adult nudity or inappropriate child nudity.
- Post objectionable material, such as material containing hate or malicious content or offers for adult services, or material inciting or advocating terrorism or violence

If you fail to comply with the above rules, such failure will constitute a violation of these Terms, and in addition to any other rights or remedies we may have, we may immediately terminate your access to and use of our Sites and Apps.

Some features of our Sites and Apps may enable you to send and receive transmissions. You acknowledge that we have no responsibility or liability for any transmissions, and/or any content included in such transmissions, sent or received by you. We reserve the right, in our sole discretion and at any time, to set limits on the number and size of any transmissions sent by or received through our Sites and Apps and/or the amount of storage space available for transmissions or for any feature made available through our website.

1. YOUR MEMBER ACCOUNT

You may create a member account with any of our Sites and Apps by registering your name, providing certain information about yourself, and creating a password. You agree that you will provide complete, current and accurate information about yourself as requested, and that you will keep that information up to date. You are responsible for safeguarding the confidentiality of your username and password that you use to access your member account on our Sites and Apps. You agree not to disclose your username or password to any third party. YOU AGREE THAT YOU ARE SOLELY AND FULLY RESPONSIBLE FOR ANY ACTIVITIES OR ACTIONS TAKEN UNDER YOUR ACCOUNT, WHETHER OR NOT YOU HAVE AUTHORIZED SUCH ACTIVITIES OR ACTIONS. You will immediately notify us of any unauthorized use of your account on any of our Sites and Apps.

In order to create a member account with any of our Sites and Apps, you must be at least 18 years of age. You represent to us that you are at least 18 years old. If you are not, please do not set up an account with any of our Sites and Apps.

2. MAKING PURCHASES

If you wish to purchase any products or services through any of our Sites and Apps, we will ask you to supply certain information applicable to your purchase, including, without limitation, payment and other information. Any such information will be treated as described in our Privacy Policy. All information that you provide to us or our third party payment processor must be accurate, current and complete. YOU REPRESENT AND WARRANT THAT YOU HAVE THE LEGAL RIGHT TO USE ANY CREDIT CARD(S) OR OTHER PAYMENT MEANS USED TO INITIATE ANY TRANSACTION. You agree to pay all charges incurred by you or any users of your account and credit card (or other applicable payment mechanism) at the prices in effect when such charges are incurred. You will also be responsible for paying any applicable taxes relating to your purchases. Verification of information applicable to a purchase may be required prior to our acceptance of any order.

Descriptions, images, references, features, content, specifications, products, price and availability of any products or services are subject to change without notice, and our current prices can be found on our Sites and Apps. We make reasonable efforts to accurately display the attributes of our products, including the applicable colors; however, the actual color you see will depend on your computer system, and we cannot guarantee that your computer will accurately display such colors. The inclusion of any products or services on our Sites and Apps at a particular time does not imply or warrant that these products or services will be available at any time.

It is your responsibility to ascertain and obey all applicable local, state, federal and international laws (including minimum age requirements) in regard to the possession, use and sale of any item purchased through our Sites and Apps. By placing an order, you represent that the products ordered will be used only in a lawful manner. We reserve the right, with or without prior notice, to limit the available quantity of or discontinue any product or service; to honor, or impose conditions on the honoring of, any coupon, coupon code, promotional code or other similar promotions; to bar any user from making any or all purchase(s); and/or to refuse to provide any user with any product or service.

Title and risk of loss for any purchases pass to you upon our delivery to our carrier. We reserve the right to ship partial orders (at no additional cost to you), and the portion of any order that is partially shipped may be charged at the time of shipment.

3. PHOTO ARCHIVING

Our goal is to make the photos Lifetouch creates available to our customers for years to come. In partnership with our parent company Shutterfly Inc., Lifetouch offers photo archiving for its customers in many of its photography programs at no additional cost. When you purchase photos from Lifetouch, we may securely retain a digital copy of one or more of your source photos for you to claim and archive in your Shutterfly account, if you wish to do so. By placing an order for Lifetouch photos and/or by registering as a customer on one or more of our websites, you are giving us your permission to retain any and all of your photos for this purpose as described in these terms of service. You may opt out at any time in accordance with the photo deletion process outlined below. If you do elect to claim and archive a Lifetouch photo in your photo library at Shutterfly.com, the terms and policies applicable to Shutterfly.com, not these Terms, define that service and your options, which may be different from those outlined here.

Please note that Shutterfly archiving services are available only to customers who purchase Lifetouch photos, whether captured within schools, churches, organizations, portrait studios or other professional photography outlets we operate. Unless purchased by a parent (or by someone with whom the parent has shared the photo), we retain school photos only as long as necessary to satisfy our obligations to the schools we serve.

By placing an order for Lifetouch photos and/or by registering as a customer on one or more of our websites, you also agree that Lifetouch may link to your account photos we capture in the future of a person whose photo you have purchased in the past, whether you purchase such future photos or not. For example, if you purchase your child's first grade school photo, we will store that photo and, if we return to photograph your child the following year, we may automatically associate that photo with your Lifetouch account. If you have opted into Shutterfly archiving, we will make such future images available in your Shutterfly account.

You also agree that we may use your contact information to notify you when such future photos are available, and that we may present to you, via email or other channels of communication or within your Lifetouch or Shutterfly account, personalized photographic products that feature your photos from time to time for your consideration. For example, we may show you how your photos would look on a specialty product such as a canvas wall hanging or holiday card. You may opt out of receiving such communications and change your contact preferences within your account at any time.

Your options. If you do not want us to retain your photos for you to claim on your Shutterfly account, you may contact us at (800) 736-4753 to opt out. Before we can fulfill your request, we may require certain information from you. Once we have validated your request, we will remove the affected photo(s) from our image repository. Please be aware, however, that if you opt out, Lifetouch may still retain your photo for other limited purposes – for example, if we are contractually required to provide photographic products and services (such as yearbook photos or the yearbook itself) to a school or other organization you are affiliated with. We reserve the right to

deny a request to remove all copies of your photos from our systems to the extent that doing so would be unreasonably burdensome or would cause us to violate a law, court order or a contractual commitment to another customer or to the organization that engaged us to provide photography that included your photo. Also, please be aware that, if you shared your photo with other purchasers, your photo deletion request will not affect any photos retained in others' photo libraries or those purchasers' archiving preferences.

4. CONTESTS AND SWEEPSTAKES

In addition to the terms and conditions of these Terms, any contests, sweepstakes, surveys, games or similar promotions (collectively, "Promotions") made available through our Sites and Apps may be governed by specific rules that are separate from this Agreement. By participating in any such Promotion, you will become subject to those rules, which may vary from these Terms. We urge you to review any specific rules applicable to a particular Promotion, which will be linked from such Promotion, and to review our Privacy Policy which, in addition to these Terms, governs any information you submit in connection with such Promotion. To the extent that the terms and conditions of such rules conflict with these Terms, the terms and conditions of such rules will control. Notwithstanding the foregoing, any dispute, claim or controversy arising out of or relating in any way to the Lifetouch service and these Terms of Service will be subject to binding arbitration pursuant to the Arbitration Agreement contained in Paragraph 16 below.

5. THIRD-PARTY SITES, SOFTWARE AND SERVICES

Our Sites and Apps may link to sites, software or services owned or operated by unaffiliated third parties ("Third Party Properties"). We have not reviewed all of the Third Party Properties to which you may be directed and we have no control over such Third Party Properties. We have no control over and are not responsible for (a) the content and operation of such Third Party Properties, or (b) the privacy or other practices of such Third Party Properties. The fact that our Sites and Apps link you to such Third Party Properties does not indicate any approval or endorsement of any such Third Party Properties. We direct you to such Third Party Properties only as a convenience. You are responsible for the costs associated with such Third Party Properties, including any applicable license fees and service charges. Accordingly, we strongly encourage you to become familiar with the terms of use and practices of any such Third Party Properties.

Other sites may provide links to our Sites and Apps with or without our authorization. We do not endorse such sites, and are not and will not be responsible or liable for any links from those sites to our Sites and Apps, any content, advertising, products or other materials available on or through such other sites, or any loss or damages incurred in connection therewith.

YOU AGREE THAT YOUR USE OF THIRD PARTY SITES, SOFTWARE AND SERVICES INCLUDING, WITHOUT LIMITATION, YOUR USE OF ANY CONTENT, INFORMATION, DATA, ADVERTISING, PRODUCTS, OR OTHER MATERIALS ON OR AVAILABLE THROUGH SUCH SITES, SOFTWARE AND SERVICES, IS AT YOUR OWN RISK AND IS SUBJECT TO THE TERMS AND CONDITIONS OF USE APPLICABLE TO SUCH SITES, SOFTWARE AND SERVICES.

6. MATERIALS SUBMITTED BY CUSTOMER

A Site or App may include interactive features that allow you to upload, submit, share or transmit (collectively "post") to third parties your photographs, digital files, personal information, comments or other content (collectively, "User Submitted Materials"). User Submitted Materials are subject to the following terms and conditions:

- You will retain ownership of such User Submitted Materials, and you grant us and our designees a worldwide, non-exclusive, transferable, royalty-free, perpetual irrevocable right and license, with right of sublicense (through multiple tiers), to use, reproduce, distribute (through multiple tiers), create derivative

works of and publicly display such User Submitted Materials solely in connection with the production or provision of any product or service you request or to show you how your User Submitted Materials would appear in our products or services. For example, when you place an order for a product, we will prepare, manipulate (if necessary), and transmit the User Submitted Materials for production, packaging and shipment. Similarly, if you want to share a photo book with your friends and family, we will accommodate your request by making your photographs available to your friends and family to download and/or to use and create projects of their own, and to purchase products with those photographs.

- Please note that, while you retain ownership of your User Submitted Materials, any template or layout in which you arrange or organize such User Submitted Materials through tools and features made available through any of our Sites and Apps are not proprietary to you, and the rights to such template or layout will remain with us.
- You represent and warrant that you own or otherwise possess all necessary rights with respect to the User Submitted Materials, and that the User Submitted Materials do not and will not infringe, misappropriate, use or disclose without authorization or otherwise violate any copyright, trade secret right or other intellectual property or other property right of any third party, and that the User Submitted Materials are not unlawful, fraudulent, threatening, abusive, libelous, defamatory, obscene or otherwise objectionable.
- You consent to the use of your likeness, and you have obtained the written consent, release, and/or permission of every identifiable individual who appears in User Submitted Materials to use such individual's likeness, for purposes of using and otherwise exploiting the User Submitted Materials in the manner contemplated by these Terms, or, if any such identifiable individual is under the age of eighteen (18), you have obtained such written consent, release and/or permission from such individual's parent or guardian (and you agree to provide to us a copy of any such consents, releases and/or permissions upon our request). If you do submit a submission that contains the likeness of an identifiable individual under the age of eighteen (18), we strongly encourage you not to include any identifying information (such as the individual's name or address) with such User Submitted Materials.
- You agree that we may (but are not obligated to) filter any User Submitted Materials (including, without limitation, deleting or replacing expletives or other harmful or offensive language), refuse to use any User Submitted Materials (including, without limitation, suspending processing and shipping of any order relating to any User Submitted Materials) and/or disclose any User Submitted Materials and the circumstances surrounding the use thereof, to any third party in order to provide the applicable products or services, to enforce these Terms or to comply with legal obligations or governmental requests.
- You agree to indemnify and hold us, our directors, officers, shareholders, employees, contractors, agents, representatives, affiliates, and third party users harmless from and against any and all claims, causes of action, liabilities, damages, losses, expenses and costs (including, without limitation, attorneys' fees) that arise directly or indirectly out of or from: (i) your violation of these Terms, any other agreement or terms of use with us, any representation or warranty contained herein or therein or any applicable law; (ii) your User Submitted Materials; (iii) your activities in connection with obtaining any products or services from us, or (iv) any activity related to access to or use of your account by you or any other person.
- User Submitted Materials that violate these Terms may be removed from our Sites and Apps; provided, however, that we have no obligation to remove User Submitted Materials in response to user reports or requests. We are not responsible for, and will have no liability for, the removal, non-removal or loss of any User Submitted Materials from our Sites and Apps. We recommend you keep back-up copies of your User Submitted Materials on your hard drive or other personal system.

7. COPYRIGHT ISSUES

While we are not obligated to review User Submitted Materials for copyright infringement, we are committed to protecting copyrights and expect users of our Sites and Apps to do the same. The Digital Millennium Copyright Act of 1998 (the "DMCA") provides recourse for copyright owners who believe that material appearing on the Internet infringes their rights under U.S. copyright law. If you believe in good faith that any material used or displayed on or through our Sites and Apps infringes your copyright, you (or your agent) may send us a notice requesting that the material be removed, or access to it blocked. The notice must include the following information: (a) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (b) identification of the copyrighted work claimed to have been infringed (or if multiple copyrighted works are covered by a single notification, a representative list of such works); (c) identification of the material that is claimed to be infringing or the subject of infringing activity, and information reasonably sufficient to allow us to locate the material on our Sites and Apps; (d) the name, address, telephone number and email address (if available) of the complaining party; (e) a statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law; and (f) a statement that the information in the notification is accurate and, under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. If you believe in good faith that a notice of copyright infringement has been wrongly filed against you, the DMCA permits you to send us a counter-notice. Notices and counter-notices must meet the then-current statutory requirements imposed by the DMCA; see <http://www.copyright.gov> for details. DMCA notices and counter-notices regarding our Sites and Apps should be sent to:

Lifetouch Inc.

Law Department Attention: Copyrights
11000 Viking Drive
Eden Prairie, MN 55344
Email: copyright@lifetouch.com

We will have the right, at any time and in our sole discretion, to block links to our Sites and Apps through technological or other means without prior notice.

8. DISCLAIMER OF WARRANTIES

EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED IN THESE TERMS, OUR PRODUCTS AND SERVICES, INCLUDING ALL MATERIALS INCORPORATED THEREIN, ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, WE AND OUR DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES, CONTRACTORS, AGENTS, REPRESENTATIVES AND AFFILIATES DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, ACCURACY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. NOTE: CERTAIN APPLICABLE LAW MAY NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. NO STATEMENT OF OURS OR ANY OF OUR DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES, CONTRACTORS, AGENTS, REPRESENTATIVES AND AFFILIATES SHALL CREATE ANY WARRANTY OTHER THAN THOSE EXPRESSLY CONTAINED IN THESE TERMS.

9. LIMITATION OF LIABILITY

TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, NEITHER WE NOR ANY OF OUR DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES, CONTRACTORS, AGENTS, REPRESENTATIVES, OR AFFILIATES (THE

"LIFETOUCH PARTIES") SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, PROFITS, USE OR DATA), WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER LEGAL THEORY, EVEN IF THE LIFETOUCH PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR RELATING IN ANY WAY TO OUR PROVISION OF (OR FAILURE TO PROVIDE) PRODUCTS OR SERVICES, OR FROM UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR SUBMISSIONS OR DATA, EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED ITS ESSENTIAL PURPOSE. YOU SPECIFICALLY ACKNOWLEDGE THAT THE LIFETOUCH PARTIES ARE NOT LIABLE FOR ANY DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF OTHER USERS OR THIRD PARTIES AND THAT THE RISK OF INJURY FROM THE FOREGOING RESTS ENTIRELY WITH YOU. FURTHERMORE, THE LIFETOUCH PARTIES WILL HAVE NO LIABILITY TO YOU OR TO ANY THIRD PARTY FOR ANY THIRD-PARTY CONTENT UPLOADED. YOUR SOLE AND EXCLUSIVE REMEDY FOR DISSATISFACTION WITH PRODUCTS IS TO OBTAIN A REFUND, AND YOUR SOLE AND EXCLUSIVE REMEDY FOR DISSATISFACTION WITH SERVICES IS TO STOP USING THE SERVICES. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, THE MAXIMUM LIABILITY OF THE LIFETOUCH PARTIES ARISING OUT OF OR RELATING IN ANY WAY TO OUR PROVISION OF (OR FAILURE TO PROVIDE) PRODUCTS OR SERVICES SHALL BE THE ACTUAL PRICE PAID THEREFORE BY YOU. NOTE: CERTAIN JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL, CONSEQUENTIAL OR CERTAIN OTHER TYPES OF DAMAGES, SO SOME OF THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU.

10. POLICY FOR IDEA SUBMISSION

Many of our customers are interested in submitting ideas and suggestions for products and services to be used at our Sites and Apps, either independently of, or in conjunction with, our internally developed concepts. We appreciate our customers' interest in improving our Sites and Apps; however, please note that any such ideas or suggestions that you submit will be owned by us, and you hereby irrevocably assign any intellectual property rights in such ideas and suggestions to us. If you intend to retain any intellectual property rights in your ideas and suggestions (patent, trade secrets, copyright, trademark, etc.), please do not submit them to us without our prior written approval.

You can inquire regarding such approval by sending a letter to Lifetouch Inc., Attn: Idea Submission, Lifetouch Inc., 11000 Viking Drive, Eden Prairie, MN 55344. If we are interested in pursuing any idea or suggestion of yours, we will contact you. Please note that an additional legal agreement may be required by us in order to evaluate your idea or suggestion.

11. NOTICE FOR CALIFORNIA USERS

This notice is for our California users: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted by mail at 1625 North Market Blvd., Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

12. INTELLECTUAL PROPERTY NOTICES

Except as specifically authorized through the sale of a product or service, or on a written release signed by us, images and information from this site may not be reproduced in any way. All images created by Lifetouch Inc. and its subsidiaries are the property of Lifetouch Inc. and its subsidiaries, our licensing partners, or are used with permission.

Our Sites and Apps are ©Lifetouch Inc. All rights reserved.

All trademarks and service marks on any of our Sites and Apps not owned by us are the property of their respective owners. The trade names, trademarks and service marks owned by us, whether registered or unregistered, may not be used in connection with any product or service that is not ours, in any manner that is likely to cause confusion. Nothing contained on any of our Sites and Apps should be construed as granting, by implication, estoppel or otherwise, any license or right to use any of our trade names, trademarks or service marks without our express prior written consent.

13. JURISDICTIONAL ISSUES

Our Sites and Apps are controlled and operated from the United States. Our Sites and Apps are not subject to the laws or jurisdiction of any state, country or territory other than that of the United States. We does not represent or warrant that any of our Sites and Apps, products, and/or services or any part thereof is appropriate or available for use in any particular jurisdiction. Those who choose to access our Sites and Apps do so on their own initiative and at their own risk, and are responsible for complying with all applicable laws, rules and regulations. We may limit the availability of our Sites and Apps, in whole or in part, to any person, geographic area or jurisdiction we choose, at any time and in our sole discretion.

14. MISCELLANEOUS

These Terms are governed by and construed in accordance with the laws of the State of California, United States of America, without regards to its conflict of law provisions. Subject to and without waiving or limiting the mandatory Arbitration Agreement set forth in paragraph 16, to the extent you or Lifetouch are before a court (for instance, to enforce an arbitrator's award), you agree to submit to the exclusive jurisdiction of any State or Federal court located in the County of Santa Clara, California, United States of America, and waive any jurisdictional, venue or inconvenient forum objections to such courts. If any provision of these Terms, or the application thereof to any person, place or circumstance, is invalid, void or otherwise unenforceable, such provision will be enforced to the maximum extent possible, or, if incapable of such enforcement, will be deemed to be deleted from these Terms, and the remainder of these Terms and such provisions as applied to other persons, places and circumstances will remain in full force and effect. No waiver by either party of any breach or default hereunder will be deemed to be a waiver of any preceding or subsequent breach or default, nor will any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy. This is the entire agreement between us relating to the subject matter herein and supersedes any and all prior or contemporaneous written or oral agreements between us with respect to such subject matter. These Terms are not assignable, transferable or sublicenseable by you except with our prior written consent. These Terms may not be modified or amended except as set forth in the introductory section of these Terms. Any heading, caption or section title contained in these Terms is inserted only as a matter of convenience and in no way defines or explains any section or provision hereof.

15. TERMINATION

Either you or we may terminate your access to our Sites and Apps and to your account at any time, with or without cause, and with or without prior notice. Without limiting the foregoing, we may terminate your access if you violate these Terms. Upon termination for any reason, your right to access and/or use our Sites and Apps will immediately cease. Upon termination, you will have no further access to, and we may delete, any information, files or materials in or related to your account, including, without limitation, any User Submitted Materials. Upon termination, we may delete all information, files and materials related to your account, including any User Submitted Materials, and we will have no obligation whatsoever to save or make any such information, files or materials available to you. You agree that we will have no liability whatsoever to you or any other party as a result of a termination of your access our Sites and Apps and to your account and/or as a result of the deletion or loss of any information, files or materials in or related to your account.

16. ARBITRATION AGREEMENT

If you are a Lifetouch customer in the United States (including its possessions and territories), you and Lifetouch agree that any dispute, claim or controversy arising out of or relating in any way to the Lifetouch service, these Terms of Service and this Arbitration Agreement, shall be determined by binding arbitration or in small claims court. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. You agree that, by agreeing to these Terms of Service, the U.S. Federal Arbitration Act governs the interpretation and enforcement of this provision, and that you and Lifetouch are each waiving the right to a trial by jury or to participate in a class action. This arbitration provision shall survive termination of this Agreement and the termination of your Lifetouch account.

If you elect to seek arbitration or file a small claim court action, you must first send to Lifetouch, by certified mail, a written Notice of your claim ("Notice"). The Notice to Lifetouch must be addressed to: General Counsel, Lifetouch, Inc., 11000 Viking Drive, Eden Prairie, MN 55344 ("Notice Address"). If Lifetouch initiates arbitration, it will send a written Notice to the email address used for your account. A Notice, whether sent by you or by Lifetouch, must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). If Lifetouch and you do not reach an agreement to resolve the claim within 30 days after the Notice is received, you or Lifetouch may commence an arbitration proceeding or file a claim in small claims court.

If you elect to seek arbitration or file a small claim court action, you must first send to Lifetouch, by certified mail, a written Notice of your claim ("Notice"). The Notice to Lifetouch must be addressed to: General Counsel, Lifetouch, Inc., 11000 Viking Drive, Eden Prairie, MN 55344 ("Notice Address"). If Lifetouch initiates arbitration, it will send a written Notice to the email address used for your account. A Notice, whether sent by you or by Lifetouch, must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). If Lifetouch and you do not reach an agreement to resolve the claim within 30 days after the Notice is received, you or Lifetouch may commence an arbitration proceeding or file a claim in small claims court.

You may download or copy a form Notice and a form to initiate arbitration at www.adr.org. If you are required to pay a filing fee, after Lifetouch receives notice at the Notice Address that you have commenced arbitration, Lifetouch will promptly reimburse you for your payment of the filing fee, unless your claim is for greater than US\$10,000, in which event you will be responsible for filing fees.

The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by this Agreement, and will be administered by the AAA. The AAA Rules and Forms are available online at www.adr.org, by calling the AAA at 1-800-778-7879, or by writing to the Notice Address. The arbitrator is bound by the terms of this Agreement. All issues are for the arbitrator to decide, including issues relating to the scope, interpretation and enforceability of this arbitration agreement. Unless Lifetouch and you agree otherwise, any arbitration hearings will take place in the county of your residence.

If your claim is for US\$10,000 or less, we agree that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds US\$10,000, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. If the arbitrator issues you an award that is greater than the value of Lifetouch's last written

settlement offer made before an arbitrator was selected (or if Lifetouch did not make a settlement offer before an arbitrator was selected), then Lifetouch will pay you the amount of the award or US\$1,000, whichever is greater. Except as expressly set forth herein, the payment of all filing, administration and arbitrator fees will be governed by the AAA Rules.

YOU AND LIFETOUCH AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and Lifetouch agree otherwise, the arbitrator may not consolidate more than one person's claims with your claims, and may not otherwise preside over any form of a representative or class proceeding. If this waiver of the right to bring class or representative claims is found to be unenforceable, then the entirety of this Arbitration Agreement shall be null and void.

The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim, except that the Arbitrator may award the excluded forms of relief if these exclusions are prohibited by law.

If any term, condition or provision of this Arbitration Agreement is held by an Arbitrator to be invalid, void or otherwise unenforceable, such provision will be enforced to the maximum extent possible, or, if incapable of such enforcement, will be deemed deleted from the Arbitration Agreement, and the remainder of the Arbitration Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated, except that the Arbitrator shall not under any circumstance preside over any class or representative claim without the consent of you and Lifetouch.

Questions or Comments. If you have any questions or comments related to these Terms of Service or a Site or App that links to them, please contact us through any means described in the "Contact Us" features of this Website or by writing to Lifetouch Inc., 11000 Viking Drive, Eden Prairie, MN 55344, attention: Corporate Communications.

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Sports
Commencements
Special Events
Church
JCPenney Portraits

Photography Services

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School K-12
Prestige | Senior
Yearbooks
Sports
Commencements
Special Events
Church
Business Headshots
JCPenney Portraits

Lifetouch.

Contact us
Who we are
Careers